reason

Free Minds and Free Markets

Roasting Hack Reporters
The Politics of Video Games
Is the FDA Necessary?

For President of the United States, We Endorse...

See page 45

Apr.2004 $4.95 Canada

*****AUTO**5-DIGIT 94301
CUST SRVC CALL 800-582-2245 X3026
MR. RON K. UNZ P1 PLT S422
WALL STREET ANALYTICS
555 BRYANT ST # 371
PALO ALTO CA 94301-1704

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

MINIMIZE YOUR TAXES.
MAXIMIZE YOUR CHARITABLE IMPACT.

With DonorsTrust, you have even more options than you might imagine.

For instance, you don't have to make hasty charitable decisions to meet the December 31 deadline. When you open a donor-advised account with DonorsTrust, you immediately get the highest charitable tax deduction allowed by law. If you give appreciated assets, you won't pay any capital gains taxes. Later, as you decide which charitable organizations best fit your philanthropic goals, you can request disbursements from your account.

Our mission at DonorsTrust is to support only those public charities that promote liberty through limited government, personal responsibility, and free enterprise. If that reflects your intent as a donor, you won't find a more reliable ally. "Trust" isn't just part of our name; it's our commitment to respect your charitable intent.

Ask us about our wide variety of funds and foundation-style services. They're all designed to give you convenient, flexible options for reducing your taxes while defending America's priceless liberty.

Smart giving.
Convenient giving.
Principled giving.

For more details, visit our Web site or call us for a free informational brochure.

DonorsTrust
BUILDING A LEGACY OF LIBERTY

703.535.3563 | www.donorstrust.org

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

reason
Free Minds and Free Markets

April 2004
Volume 35, No. 11

Departments

4 **Editor's Note** — In defense of drunken sailors.

5 **Contributors**

6 **Letters** — Domination fantasies, just say no again, self delusions...

8 **Clings** — Flower power, climate change confidential, letting genes out of the bottle, textbook tolerance, late communism, cracking down on clean air, option overload...

Columns

14 **Hack Roast** — When citizens attack...reporters. *Matt Welch*

16 **Abuse Revisited** — A feminist challenges the conventional wisdom about domestic violence. *Cathy Young*

18 **Playing to the Totalitarian Left** — Two democratic candidates appeal to their party's "core." *Peter Bagge*

Features

20 **Free Play** — The politics of the video game. *Kevin Parker*

28 **Emotional Choices** — What story you choose to believe about antidepressants reveals a deeper truth about who you are. *Joli Jensen*

36 **Washington's Biggest Crime Problem** — The federal government's ever-expanding criminal code is an affront to justice and the Constitution. *William L. Anderson and Candice E. Jackson*

45 **Building the Perfect Candidate** — The dreamboat and the dud we'll actually get. *Tim Cavanaugh and Nick Gillespie*

Culture & Reviews

50 **Regulation for Dummies** — Is the FDA necessary? *Todd Seavey*
Protecting America's Health: The FDA, Business, and One Hundred Years of Regulation, by Philip J. Hilts

55 **Hobbes in Cyberspace** — Life in an online game world proves nasty, brutish, and short. *Jesse Walker*

56 **Fools for Communism** — Still apologists after all these years. *Glenn Garvin*
In Denial: Historians, Communism and Espionage, by John Earl Haynes and Harvey Klehr

64 **Transcendental Goods** — Charles Murray discusses art, accomplishment, faith, and doubt. *Interviewed by Ronald Bailey and Nick Gillespie*

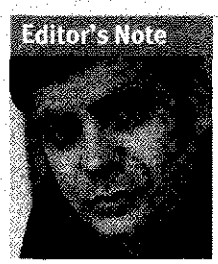
66 **Artifact: Text Lit** — How cell phones really send messages. *Charles Paul Freund*

Cover illustration: Terry Colon

reason (ISSN 0048-6906) is published monthly except combined August/September issue by the Reason Foundation, a nonprofit, tax-exempt organization, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034-6064. Periodicals postage paid at Los Angeles, CA, and additional mailing offices. Copyright© 2004 by Reason Foundation. All rights reserved. Reproduction or use, without permission, of editorial or graphic content is prohibited. **reason** and Free Minds and Free Markets are registered trademarks owned by the Reason Foundation. SUBSCRIPTIONS: $19.98 per year. Outside U.S. add $10/year surface, $55/year airmail. Address subscription correspondence to **reason**, P.O. Box 526, Mt. Morris, IL 61054, 815-734-1102. For address change (allow six weeks), provide old address and new address, including zip code. UNSOLICITED MANUSCRIPTS returned only if accompanied by SASE. INDEXED in Readers' Guide to Periodical Literature, InfoTrac, Historical Abstracts, Political Science Abstracts, America: History and Life, Book Review Index, and P.A.I.S. Bulletin. Available on microfilm from University MicroFilms International, 300 North Zeeb Rd., Dept. P.R., Ann Arbor, MI 48106. Printed in the United States. POSTMASTER: Send address changes to **reason**, P.O. Box 526, Mt. Morris, IL 61054. Publications Mail Sales Agreement No. 1476696.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Editor's Note



In Defense of Drunken Sailors

TO SAY THAT President George W. Bush has been spending money like a drunken sailor is an insult to drunken sailors. After all, when land-starved seamen go on their binges, they spend only their own money, not yours and mine. With very few exceptions—such as the income tax cuts he improbably muscled through and his recent vague gesture toward loosening immigration laws—Bush has done nothing to further the "free minds and free markets" that **reason** champions.

His willingness to slap tariffs on lumber and steel demonstrated that he's no principled free-trader. His Medicare "reform" shows he's ready, willing, and able to buy votes with the best (that is, worst) of them. His proposed budget for fiscal year 2005 would increase defense spending by over 8 percent, nondefense discretionary spending by 6 percent, and entitlement spending by almost 5 percent. Sadly, such Texas-sized hikes are hardly surprising: Through his first three fiscal years, Bush oversaw a total inflation-adjusted spending increase of about 16 percent.

Fiscal profligacy is bad enough, especially coming from a candidate who claimed he would cut government spending (and, lest we forget, institute a "humble" foreign policy). But Bush has not only kicked out the jams on taxpayer-funded treats; he has morphed into, in Andrew Sullivan's apt term, a "nanny-in-chief."

In this year's State of the Union address—a milestone in mind-numbing fluff—Bush spent more time talking about testing school kids for drugs and the evils of steroids than he did about Social Security privatization. Among his great hopes for a second term are expanding the National Endowment for the Arts to bring culture to rubes in small-town America and putting the government in the business of marriage counseling. This last brain fart comes even as he steadfastly works to deny gays and lesbians the ability to get hitched in the first place.

There's worse news: Bush is running against a gaggle of Democrats who range from the pathetic (e.g., Dennis Kucinich, who got even fewer dates than votes on the campaign trail) to the desperate (Howard Dean, who went from touting himself as fiscally conservative and socially liberal to announcing he would "reregulate" the American economy) to the vacuous (John Edwards, whose "upbeat" message betrays the fact that he has no message). The donkey party front-runner as I write this, John Kerry, has distinguished himself mostly by performing bizarre shows of manliness on the hustings and by running away from his votes in favor of NAFTA, the USA PATRIOT Act, the No Child Left Behind Act, and using force in Iraq.

We haven't elected a majority president since 1988, and given the major-party choices we usually see, that's no shocker. The eventual winner this fall may or may not actually pull more than half of all votes cast, but this much is certain: It would be a far more interesting—and satisfying—political season if we had the opportunity to vote for the dream candidate we stitch together for you in "Building the Perfect Candidate" (page 45).

Nick Gillespie

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

reason

Editor-in-Chief Nick Gillespie (gillespie@reason.com)

Managing Editor Jesse Walker (jwalker@reason.com)

Senior Editors
Brian Doherty (bdoherty@reason.com)
Charles Paul Freund (cpf@reason.com)
Jacob Sullum (jsullum@reason.com)

Assistant Editor Julian Sanchez (jsanchez@reason.com)

Science Correspondent Ronald Bailey (rbailey@reason.com)

Editorial Assistant Mary Toledo (mtoledo@reason.org)

Art Director Barb Burch (bburch@reason.com)

Photo Researcher Julie Wolf

Web Editor Tim Cavanaugh (tcavanaugh@reason.com)

Webmaster Brian J. Taylor

Reason Express Writer Jeff A. Taylor (jtaylor@reason.com)

Contributing Editors
Peter Bagge, Gregory Benford, James V. DeLong, Glenn Garvin, Mike Godwin, David R. Henderson, John Hood, Alan Charles Kors, Brink Lindsey, Carolyn Lochhead, Loren E. Lomasky, Mike Lynch, John McClaughry, Deirdre N. McCloskey, Michael McMenamin, Michael Valdez Moses, Charles Oliver, Walter Olson, John J. Pitney Jr., Thomas Szasz, Matt Welch, Cathy Young, Michael Young

Publisher Mike Alissi (malissi@reason.com)

Legal Adviser Don Erik Franzen

Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
Tel: 310-391-2245 Fax: 310-391-4395

Advertising Sales
Burr Media Group
Ronald E. Burr, 703-893-3632
Joseph P. Whistler, 540-349-4042
(advertising@reason.com)

Subscription Service
P.O. Box 526, Mt. Morris, IL 61054
1-888-reason-8 (1-888-732-7668)
(subscribe@reason.com)

Circulation
Circulation Specialists Inc.

Newsstand Distribution
BigTop Newsstand Services
415-643-0161 Fax: 415-643-2983
(info@bigtoppubs.com)

reason is published by the Reason Foundation, a 501(c)(3) nonprofit educational foundation. Contributions to the Reason Foundation are tax-deductible. Signed articles in **reason** reflect the views of the authors and do not necessarily represent those of the editors, the Reason Foundation, or its trustees; articles should not be construed as attempts to aid or hinder the passage of any bill before any legislative body. The claims and opinions set forth in paid advertisements published in this magazine are not necessarily those of the Reason Foundation, and the publisher takes no responsibility for any such claim or opinion.

REASON FOUNDATION
Trustees
Harry E. Teasley Jr. (Chairman), William A. Dunn (Chairman-elect), Thomas E. Beach, David W. Fleming, C. Boyden Gray, James D. Jameson, Manuel S. Klausner, David H. Koch, James Lintott, Stephen Modzelewski, Sarah A. O'Dowd, Robert W. Poole Jr., Randall N. Smith, Al St. Clair, Frank Bond (emeritus), Walter E. Williams (emeritus)

President David Nott
Vice President, Magazine Nick Gillespie
Vice President, Research Adrian T. Moore

Contributors

Joli Jensen

William L. Anderson

Candice E. Jackson

Terry Colon

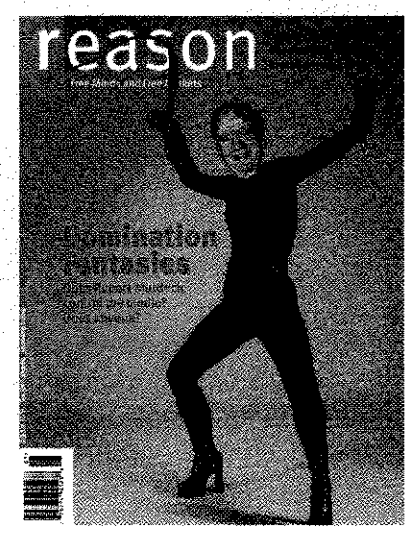
JOLI JENSEN's interest in mood-altering pharmaceuticals, the focus of "Emotional Choices" (page 28), is not merely academic. As someone who has wrestled with depression, Jensen says she has been "amazed by the number of different health care professionals who have offered to write me prescriptions, and by how baffled they are by my refusal to give these drugs a try." Jensen says she was reticent about offering such a personal take on the issue, but it is "only fair to illustrate—using my personal experience—the kinds of quandaries all of us face." Jensen teaches communications at the University of Tulsa.

Frostburg State University economist WILLIAM L. ANDERSON couldn't believe it when he learned that a new member of his church was due to begin serving a 25-year prison sentence on federal racketeering charges. The underlying crime turned out to be a dodgy tax maneuver that his friend had erroneously believed to be legal. Anderson soon discovered this case was only too typical in the booming industry of federal prosecutions. Anderson shares some of his findings about this issue in "Washington's Biggest Crime Problem" (page 36).

Anderson's co-author, CANDICE E. JACKSON, gave up running Republican political campaigns to study law. She now wields her expertise in that field on behalf of the California-based Judicial Watch, where she combats government corruption. Owing to another sort of state iniquity, Candice is planning to travel to Canada soon to obtain a license to marry her partner of two years.

As a kid, TERRY COLON relished trips to his grandparents' house, where he'd spend hours poring over their compilation of *New Yorker* cartoons. As his taste became more refined, he got hooked on illustrated humor magazines like *MAD*, *Cracked*, and *Sick*. Colon was soon drawing for local alternative papers, and his style will be familiar to many readers because of his work for the late, great webzine *Suck*. A self-described "political mutt," Colon illustrates **reason**'s look at the ideal presidential contender in "Building the Perfect Candidate" (page 45).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



Letters are welcome and should be addressed to

reason
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034
fax: (310) 390-8986
letters@reason.com

Domination Fantasies

It has been a long time since I last saw a TV program on the subject of American imperialism on the "huge variety of news, information, opinion, culture, and entertainment, whether from 10, 50, or 3,000 sources" to which Ben Compaine refers ("Domination Fantasies," January). Some of Bill Moyers' programs come to mind. Nowhere else, especially not on Fox or the Pentagon News Network (a.k.a. CNN).

Thank God I have such a huge variety of choices. It's like being in a country with 500 different flavors of coffee, except there is no milk, orange juice, or beer. Only coffee.

Please disagree and prove me wrong. I will gladly stand corrected and start watching whatever television network or channel you claim is broadcasting such information.

Bill Fairchild
Douglas, MA

Unlike some of the media critics Ben Compaine discusses, I do not see concentrated ownership of media outlets as the issue so much as the alignment of their propaganda. We all have a certain tunnel vision in our views: For the well-read, it is easy to assume that everyone has the time, interest, access, and understanding to counterbalance the bias of any one news source. The reality is that some will eagerly solicit the uninformed to support their agenda via the one-note, often sensationalized message of the media. The ordinary person is not given a balanced view, and to assume that the struggling masses will look for it in alternative venues is naive.

Larry Barlow
Chester, VA

Ben Compaine replies: Bill Fairchild and Larry Barlow are addressing much the same core issue: Both are concerned that the mass audience is not exposed to a wider range of perspectives. Fairchild would like his particular perspective to get broader coverage; Barlow assumes that the great unwashed are too dumb, busy, or lazy to be proactive enough to be well-informed citizens on a wide range of issues.

Fairchild needs to think beyond network television news shows. They are mainstream by definition. None is the video equivalent of *The Nation* or *The Weekly Standard*. If they became like those publications, viewership would drop to about the same level as the circulations of those magazines.

Moreover, although mainstream networks may not do an hour on American imperialism, they certainly have covered that perspective through guests on *Meet the Press*–type shows, in sound bites as part of other coverage, even in covering recent presidential debates. So, while the 7-Eleven may have only coffee, there are many specialty stores in town offering other beverages.

Barlow is right that most of us don't have the time to review the many sides of the major issues of the day. Most people are busy raising families, keeping up with their professions, and paying their bills. In their down time, they want relaxation, not research.

But the answer is not to require every media entity to provide every view on every issue in every program. Even the now-defunct Fairness Doctrine did not require that. Nevertheless, over the decades I have noted that on major fault line issues—incursions into Iraq, gun control, abortion—Americans are about evenly split. Somehow people manage to get the information they need from a variety of sources to form diverse opinions.

One footnote reinforces my point about access: In the month after the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

January issue of **reason** became available, I heard relatively little about my article. The first morning that it was available at the **reason online** site, I was flooded with e-mails from friends, colleagues, and strangers. E-mail lists following the media scooped it up, distributed the URL to subscribers, and provided it on their Web sites. My viewpoint had not been covered on CNN, Fox, or ABC, but you folks sure found it. More cream for your coffee?

Just Say No Again

Although Renee Moilanen's article on the "new" anti-drug education ("Just Say No Again," January) was interesting and enlightening, and I'm no fan of the war on drugs, I'm not convinced by her negative appraisal of the Life Skills Training program.

Any study of a program's efficacy has to cut out participants who don't complete enough of the program for it to be effective. If a high school student shows up for class only three days a week, every week, and then gets a poor grade at the end of the year, the course material seems a poor starting point for troubleshooting.

It may be that the kids who do barely half the training tend to be the same ones who use drugs, but the program designers don't know whether that's true at the outset, and they have to draw a line somewhere. Without a separate study to first determine what percentage of students tend both to do drugs and to skip out of anti-drug training, the researchers can't take such associations into account.

It's certainly possible (and maybe likely) that the study's authors chose the most favorable cutoff point. I wonder what it would have looked like if they'd chosen only kids who'd completed 80 percent of the coursework. If the numbers didn't look good from that angle, it would be more damning than the criticism offered by Moilanen. Too bad we'll probably never see the raw numbers required to draw our own conclusions.

Dan Hull
Antelope, CA

Self Delusions

Julian Sanchez's well-reasoned review of Owen Flanagan's *The Problem of Soul* ("Self Delusions," January) may be further developed on two crucial fronts.

First, Flanagan's general contention (as summarized by Sanchez) that "it would not count as an act of free will if some nondeterministic quantum fluctuation" causally contributed to an eventual action (an argument long rehashed since the advent of quantum physics) presupposes a myopic view of "freedom" and "self-authorship."

As posited by the Oriental doctrine of *wu wei*, one may freely—and quite literally—open one's mind to random neurophysiological inputs and still claim personal responsibility for that act of openness, if not sole authorship for its consequences. On this nontraditional account of free will, we retain self-authorship by virtue of freely deciding to initiate an undetermined "value experiment."

Second, even without a libertarian free will we are still, as Sanchez highlights, left with the option of being more or less reflective with respect to determined actions. In this sense, the real "problem of the soul" may turn out to be that we have been focusing on free will rather than free consciousness.

Christian P. Erickson
San Francisco, CA

I find it interesting that reviewer Julian Sanchez, and apparently author Flanagan, conclude that the absence of a permanent "self" is a new insight, a result of modern neuroscience. The notion is, however, at the very core of Buddhism, a religion and philosophy now about 2,500 years old. Almost every word of the review could have been written by a Buddhist, although the citations (Rand, Wittgenstein, Hayek, Nozick) doubtless would have been different.

Needless to say, there is a profound role for morality in Buddhism, even without a permanent self, due to (as they see it) the law of cause and effect: karma. To oversimplify, we are punished by our sins, not for them. A Buddhist is as free as a libertarian, though: One's karma is one's history, not one's fate; it conditions our actions but does not determine them.

Albert S. Kirsch
Bal Harbour, FL

Attention college students!

reason is accepting applications for the 2004 Burton C. Gray Memorial Internship. The intern works 10 weeks during the summer in our Los Angeles office and receives housing, a $2,000 stipend, and up to $400 in travel expenses. The job includes reporting and writing for **reason** and **reason online**, helping with research, proofreading, and other tasks. Previous interns have gone on to work at places such as *The Wall Street Journal*, *Forbes*, and *ABC News*.

To apply, send your resume, up to five writing samples, and a cover letter to Gray Internship, **reason**, 3415 S. Sepulveda Blvd., #400, Los Angeles, CA 90034.

The deadline is March 22, 2004.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Flower power; climate change confidential; letting genes out of the bottle; textbook tolerance; late communism; cracking down on clean air; option overload

Slipping down the slope

PATRIOT Spawn

Julian Sanchez

WHEN A DRAFT of the Domestic Security Enhancement Act, nicknamed PATRIOT II, was leaked last year, public outrage scuppered the proposal. But since then key provisions of the bill have been introduced piecemeal, in what many civil libertarians see as an attempt to fly below the public's radar.

In December, as Americans were glued to coverage of Saddam Hussein's capture, President Bush took the unusual step of signing a bill on a Saturday. The new law, the Intelligence Authorization Act for Fiscal Year 2004, expanded the definition of "financial institutions" covered by the PATRIOT Act. Law enforcement agencies may now obtain records without a court order not only from banks but from insurers, travel agencies, stockbrokers, real estate agencies, car dealerships, casinos, jewelers, pawnshops, the U.S. Postal Service, and any other business "whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters."

Other components of PATRIOT II remain in the legislative pipeline. The Clear Law Enforcement for Criminal Alien Removal Act, which has attracted more than 100 House co-sponsors, would turn local law enforcement officials into deputy immigration cops. The Terrorist Penalties Enhancement Act would impose the death penalty for acts of domestic terrorism that result in a person's death. H.R. 3037, introduced by Rep. Tom Feeny (R-Fla.), would empower the attorney general to issue secret administrative subpoenas not subject to judicial oversight. (These are similar to the existing "national security letters," but have a wider scope.) Sen. Jon Kyl (R-Ariz.) has introduced a bill to provide for mandatory pretrial detention of those accused of certain terrorism-related crimes.

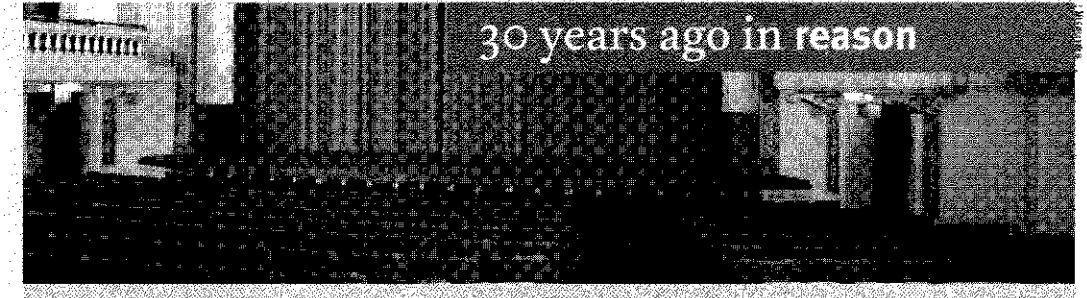
American Civil Liberties Union Legislative Counsel Charles Mitchell believes the fragmentation of PATRIOT II is troubling because "it's always easier to get people to give up a little than a lot. They say, 'We already have these powers; we're just tweaking them.' But when you add up the tweaks, you've got a dramatic expansion of power."

Free the florists!

Flower Power

Jacob Sullum

ONE DAY LAST year Sandy Meadows, who supervises the floral department at an Albertson's grocery store in Baton Rouge, was helping out at another Albertson's that had lost its florist. An inspector from the Louisiana Horticulture Commission stopped by and told her to throw out the seven arrangements she had produced



"The truly small minicomputer market... represents a possible threat to IBM, because huge and expensive computers may soon be replaceable by expandable systems of combined microcomputers."

—Alan Reynolds, "Trustbusting for Fun & Profit"

"Seek individually or in a class action to enjoin the enforcement of price controls and allocation regulations. Force the government to prove the constitutionality of every one of these intrusions."

—Henry G. Manne, "Fighting Back Against Controls"

"The first attempt to repress the movies was a humdinger by any standards. In 1908 the Mayor of New York City ordered his police to close *all* the cinemas in the city."

—Diane Alexander, "Pass Adam His Fig-Leaf"

"If adopted by Congress and the FCC, this kind of hands-off policy [toward cable TV] could lead to the flowering of a new era of diverse, sophisticated programming, catering to hundreds of markets currently too small to be served by broadcasting's mass-media approach."

—Trends, "A Small Step Toward TV Freedom"

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that morning. Otherwise, he'd have to give her a $250 citation for practicing floristry without a license.

Although Meadows has nearly a decade of experience arranging flowers, state law requires that she practice her art only in stores that also employ a licensed florist. She does not qualify because she never passed the two-part licensing exam, which includes a one-hour written test and a highly subjective four-hour practical test judged by the very florists with whom applicants would compete. Unsurprisingly, most fail.

Louisiana appears to be the only state in the U.S. that does not trust consumers to judge the quality of floral arrangements. If Meadows gets her way, it will no longer have that distinction. In December she and two other women whose floral work has been praised by the public but rejected by the state filed a federal lawsuit challenging the licensing requirement as an arbitrary, unconstitutional infringement on their right to earn a living.

With help from the Washington, D.C.–based Institute for Justice, Meadows and her fellow plaintiffs—Shamille Peters, a New Orleans woman who also has worked in an Albertson's floral department, and Barbara Peacock, a Shreveport woman who wants to open a wedding chapel—are asking a federal judge to declare the licensing barrier a violation of rights guaranteed by the 14th Amendment. They argue that the regulations fail the "rational basis" test because they do not serve a legitimate public purpose.

Seeming to concede that point, Louisiana Agriculture Commissioner Bob Odom told the Associated Press that if the floral industry asked him to scrap the licensing requirement he'd support legislation to do so. Clark Neily, the lead attorney in the case, notes that "asking licensed florists whether they wish to throw the industry open to all comers is like asking the fox if it wants to stop guarding the henhouse." ▪

Letting genes out of the bottle

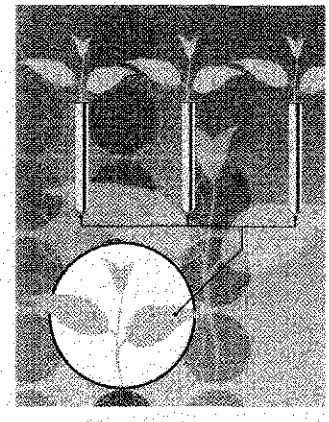
Patent Sense

Brian Doherty

ACTIVIST GROUPS SUCH as the Rural Advancement Foundation International complain that the technology behind genetically modified (GM) crop seeds is usually patented, often by huge conglomerates such as Monsanto. They fear patent controls will make poor farmers serfs of global agri-conglomerates because they'll have to buy seeds every year under restrictive licensing agreements.

But patents don't last forever. In the U.S. they last 20 years from the issue date, and in Europe it's 20 years from the application date. For some key GM plant patents, including several held by Monsanto, that anniversary arrives this year—and as the decade progresses many more will be expiring. In the long run, because the patent system eliminates "trade secrets" and tells the whole world how things are done, it guarantees that inventions will become available to anyone, free of restrictions.

Gregory Conko, a senior fellow at the Competitive Enter-



prise Institute, notes that agribusinesses frequently allow use of their patented seeds and genes by nonprofit foundations and researchers, such as the developers of beta-carotene-filled "golden rice," designed to reduce vitamin A deficiencies in the developing world.

It is still possible, indeed probable, that companies like Monsanto will try to maintain patent-like protections through restrictive licensing agreements with farmers. "Monsanto's agreement system could continue," Conko grants. "But once the patent expires, there are far fewer startup cost for the next entrepreneurial firm to reproduce it, either without licensing agreements or with one but at a lower price." ▪

Gulf of Hate

Textbook Tolerance

Tim Cavanaugh

THIS WINTER, THE six nations that make up the Gulf Cooperation Council—Saudi Arabia, Kuwait, Oman, Qatar, Bahrain, and the United Arab Emirates—agreed to begin revising public school textbooks to remove inflammatory passages. Among the lessons Gulf kids will no longer be studying are sweeping condemnations of Jews and Christians, disquisitions on the iniquity of infidels, and a Q&A that begins "God hates...." (Answer: "Infidels.")

So far, the modernization effort appears to be having mixed success. Kuwaiti Education Minister Rasheed al-Hamad promised the new textbooks will "not encourage pupils to hate other people and religions," while officials in Qatar and the UAE say such revisions have been underway since shortly after 9/11. In Saudi Arabia, however, a group of prominent intellectuals and religious leaders condemned the effort as "the path of infidels."

Speaking of which, a study conducted by the Merlin consumer research firm shortly after the council's announcement provides a more compelling reason to be optimistic: Saudi kids are now watching between three and five hours of television a day. ▪

Capitalist roaders

Late Communism

Jesse Walker

THE PEOPLE'S Republic of China is still formally a communist country. But if this is »

Quotes

"Congressman Kucinich is holding up a pie chart, which is not truly effective on radio." ▪

—moderator Neal Conan at a January 6 Democratic presidential debate broadcast only on National Public Radio

"I have recently been made aware of a market practice known as 'short selling' and am amazed that it is legal." ▪

—Oklahoma Attorney General Drew Edmondson, quoted in the *Los Angeles Times* on December 18

Sources

Britney Spears and Outkast are old news. Next time you're jogging with your iPod, why not groove to the dulcet tones of Antonin Scalia? The OYEZ Project at Oyez.org serves up oral arguments from seminal Supreme Court cases, from *Miranda* and *Katz* to *Eldred* and *Lawrence*. ▪

Politics is a slave to diffuse costs and concentrated benefits. Organizing is easier for a few hundred players in a subsidized industry than the millions of taxpayers stuck with the bill. Enter PayDemocracy.com, which lowers the transaction costs of grassroots activism. Find a cause—or start your own mini-PAC—and donate a few bucks with a mouse click. ▪

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Brickbats

As George Pulido and his sons were walking home from a birthday party in New York City, a small balloon his oldest son was carrying hit the sidewalk and burst. Police immediately ticketed him for making an unreasonable noise.

Islamic leaders in Somalia say they will flog anyone caught using or selling condoms. Sheikh Nur Barud, chairman of the Ulema Council, explains that the use of condoms will increase adultery, and that those promoting adultery deserve to be punished.

An officer with the Aberdeen Racist Incidents Partnership says Scottish children as young as 3 should be reported to police if they make racist remarks.

Ontario's provincial auditor says the Ministry of Consumer and Business Services received about 4,000 complaints and inquiries related to debt collectors last year, including 800 written, formal complaints. But it conducted only 10 inspections of debt collection services. Similarly, 2,000 complaints about motor vehicle repairs brought just six inspections. But eight complaints about adult video stores—none in writing—prompted almost 1,600 inspections.

New Haven, Connecticut, has had a rash of robberies and shootings at convenience stores and service stations. Instead of going after the criminals, city officials have proposed forcing the stores to close from 11 p.m. to 6 a.m. Store owners point out that 20 percent of their business comes during those hours.

The staff at the U.S. Army's Combat Equipment Battalion at Hythe, Great Britain, just *had* to be at the office Christmas party. No, really. They were ordered by the base command to attend the party or face disciplinary action.

Thailand's ruling Thai Rak Thai Party is considering a proposal that would bar politicians from keeping mistresses or visiting brothels. One lawmaker objects, on the grounds that the party would be able to field only about 30 candidates for parliament if the ban is enacted. The party currently has more than 200 M.P.s.

When New York City's Human Rights Commission demanded that the makers of *Grand Theft Auto* remove the phrase "Kill Haitians" from the video game, Mayor Michael Bloomberg hinted that the company could be investigated for human rights violations. Take-Two Interactive hastily apologized and promised the phrase would not appear in future games.

Maryland State Police Superintendent Edward T. Norris has been charged with illegally spending about $20,000 in official funds while he was the top cop in Baltimore. Norris allegedly used the money to cover personal expenses, including those stemming from adulterous affairs with several women.

About 12,000 residents of Allentown, Pennsylvania, were notified that they had failed to pay city taxes. Why so many? Maybe because the city neglected to send out some 15,000 tax bills.

Charles Oliver

›communism, it's an increasingly peculiar kind. In December party leaders proposed a constitutional amendment to protect property rights.

It's hard to believe it's been less than 30 years since the Cultural Revolution, when Beijing attempted to eradicate every hint of capitalist thinking in China. Since then the government has moved far from the collectivist ideals of the Maoist period, by adopting a moderately individualist "responsibility system" within state-owned enterprises and then encouraging actual entrepreneurship outside the public sector. In 2002 the Communist Party even invited business owners to join its ranks.

The new amendment is an important symbolic shift, one meant to enshrine the rights of entrepreneurs in Chinese law. That doesn't mean, of course, that China is embracing a full-fledged market system, let alone civil liberties or popular self-government. For evidence, consider the fact that no one believes the party's new proposal will fail to pass the legislature. China may have a capitalist class, but it has yet to acquire independent democratic institutions.

Climate change confidential

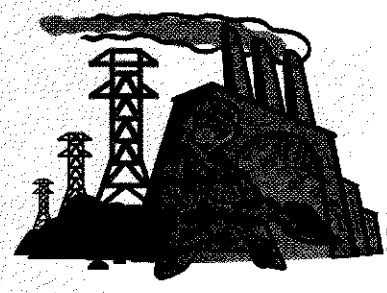
Why Warming?

Ronald Bailey

The United Nations Intergovernmental Panel on Climate Change claims to have found "new and stronger evidence that most of the observed warming over the last 50 years is attributable to human activities." This conclusion is based on improvements in computer models that can now "produce satisfactory simulations of the current climate." But two recent studies show that the models may not have adequately accounted for two important factors: soot and land use changes.

The first study, by University of Maryland climate researchers Eugenia Kalnay and Ming Cai, was published last May in *Nature*. It showed that, in addition to the well-known "urban heat island effect," in which temperatures increase in metropolitan areas, other land use changes, especially agricultural conversion and irrigation, cause surface warming as well. The authors wrote that "the trend in daily mean temperature due to land use changes is 0.35 degrees centigrade per century." This value is more than twice as high as previous estimates based on urbanization alone.

The second study, by James Hansen and Larissa Nazarenko of NASA's Goddard Institute for Space Studies, appeared in the December *Proceedings of the National Academy of Sciences*. Hansen and Nazarenko looked at the effect that the soot produced by burning fossil fuels



and biomass has once it settles on ice and snow in the Northern Hemisphere. Dirty snow melts faster than clean snow because the black particles absorb more heat from the sun. Hansen and Nazarenko estimate that the soot effect may be responsible for about 0.2 degree Celsius of warming over 120 years. It also helps explain thinning Arctic sea ice, earlier spring snowmelt, and many melting glaciers often cited by environmental activists.

Both sets of researchers still firmly maintain that greenhouse gases are the most important man-made influence on climate. Hansen and Nazarenko insist, despite their findings, that "anthropogenic greenhouse gases have been the main cause of recent global warming."

Yet these studies suggest that land use changes account for 0.35 degrees Celsius of warming over 100 years and that soot is responsible for another 0.2 degrees of warming over a slightly longer period. Total warming during the century »

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Balance Sheet

Jeff A. Taylor

Caissons Rolling

The Pentagon admits it needs 30,000 more troops to meet all of its various security commitments around the globe. It took a while, but the honesty is refreshing. Liberating, even.

Magic Beans

Harvard researchers find coffee drinkers have a 30-to-50-percent lower risk of diabetes than non–java addicts. Diabetes joins colon cancer, cirrhosis, gallstones, and Parkinson's disease as ailments coffee seems to protect against.

Packet Protector

Sen. John Sununu (R-N.H.) promises to protect Voice Over Internet Protocol from federal and state regulation. California, Minnesota, and New York are among the states that say online telephone calls should comply with the same regulations as 19th-century telecom.

Crude Investment

Oil begins to flow from Kirkuk to the rest of the world, providing northern Iraq with a key source of wealth.

Good Goo

A report from the Institute of Physics says "gray goo" doomsaying by the likes of Prince Charles obscures the gains nanotechnology could bring to developing countries, including better water purification and cheaper, more accurate diagnoses of diseases such as tuberculosis.

Virtually Educated

About 1,000 kids in Wisconsin enjoy the flexibility of virtual charter schools. Without rigid districts, students can sign up for classes that would be unavailable if they stuck to their brick-and-mortar schools.

Puzzle Box

Researchers at Microsoft look at imposing crushing costs on spammers—not in money but in time, by requiring e-mail senders' computers to solve a computational puzzle as a condition of delivery.

Guests Only

The FBI demands guest lists from Las Vegas hotels as part of anti-terror activities for New Year's Eve and almost certainly gives visitors to the Super Bowl in Houston the same once-over.

Pricey Speech

A South Carolina judge fines an anti-Bush protester $500 for daring to protest too close to the president. The Secret Service maintains that security, not P.R., drives the need to pen protesters far from the POTUS in "demonstration zones."

Learned Hands

A report from the Teaching Commission finds the quality of teachers in America lacking and suggests several radical reforms, such as merit pay and greater autonomy for principals in firing and hiring.

Kid Not

Pennsylvania's anti-kiddie-porn law succeeds in blocking more than a million legit Web sites. The Center for Democracy and Technology notes school sites were among those blocked by the law.

Theory Leery

Georgia considers evolution too revolutionary for the public schools. A proposed state curriculum for science for middle and high schools nixes the *e*-word and replaces it with "biological changes over time."

Golden Tablets

Just months after passage of the Medicare drug benefit, its cost zooms from $400 billion over 10 years to $540 billion.

Warning: Warning

The Department of Homeland Security launches the National Cyber Alert System, a plan to spam e-mail users about cyber security threats. Never mind that many public and private outfits, software sellers, and system administrators already issue such warnings.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Data

Lack of PRIDE

Jacob Sullum

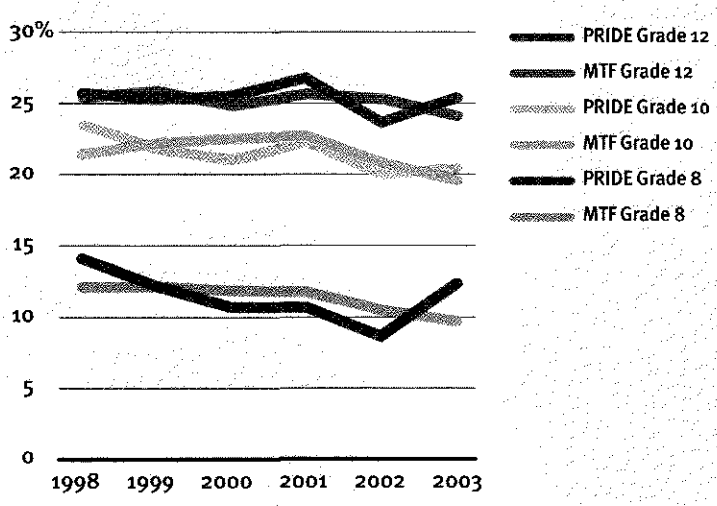
When last year's Monitoring the Future Study found that illegal drug use was down among teenagers, the Office of National Drug Control Policy (ONDCP) trumpeted the results as evidence that "when we push back against the drug problem, it gets smaller."

This exuberance contrasted with the official silence that had accompanied the results released a few months earlier from the 2003 PRIDE Survey, which found a marked upturn in drug use among adolescents.

The PRIDE findings included substantial increases in past-month pot smoking (from 4.7 percent to 7.1 percent) and heroin use (from 1 percent to 1.6 percent) among junior high school students. As the Marijuana Policy Project (MPP) points out, the ONDCP's failure to comment on these data was especially striking because in 2002 it had proudly cited the PRIDE Survey to show that the government was winning the war on drugs.

Whichever survey is closer to the truth, MPP notes, both indicate that the government has not even come close to the goal set in 1998 by Congress, which charged the ONDCP with reducing past-month drug use among adolescents to 3 percent by the end of 2003. Judging by these surveys, the current rate is more than five times that.

Students Reporting Past-Month Drug Use



Sources: University of Michigan, PRIDE Surveys

› was 0.6 degrees Celsius, leaving something like 0.05 degrees attributable to increases in greenhouse gases. Cut both results in half, and accumulating greenhouse gases would still account for only about half of the warming seen in the last century.

While both studies could be wrong, they suggest the computer models may not adequately account for some important processes and may therefore overestimate future warming due to greenhouse gas increases. Despite these uncertainties, environmental activists insist the science is settled and demand that the world's governments reorganize the global economy to reduce greenhouse gas emissions. ▪

Cracking down on clean air

Belting Utilities

Brian Doherty

A WHITE HOUSE initiative to eliminate one of the perverse incentives created by the Clean Air Act has been halted by a federal appeals court. The Bush administration had planned to relax enforcement of "new source review" (NSR) regulations at the end of December, but 12 state attorneys general and various city officials sued to stop the change. The U.S. Court of Appeals in Washington, D.C., has blocked the reform pending resolution of the suit.

NSR involves changes to pre-1977 power plants that were grandfathered under the Clean Air Act. Such plants did not have to meet all the equipment requirements for a new plant immediately. The newer, more onerous requirements were supposed to kick in only when the plants went through "major modification," as opposed to "routine maintenance, repair, and replacement."

In the late 1990s, the Environmental Protection Agency (EPA) began tightening NSR rules and suing utilities, including the government's own Tennessee Valley Authority, in ways that the industry saw as violating the meaning of those phrases. Charles McCrary, head of Southern Company Generation, complained in Senate testimony in 2000 that the new regulations were being "triggered by many common routine maintenance operations, including operations that improve plant efficiency." Applications for minor upgrades were taking one to three years to process.

Utilities were thus discouraged from doing any useful upgrades for fear of triggering stricter regulation. When then-EPA Administrator Christine Whitman announced the NSR relaxation in November 2002, she said "some aspects of the NSR program have deterred companies from implementing projects that would increase energy efficiency and decrease air pollution."

The new rules that were stopped by the appeals court would have allowed utilities flexibility in making upgrades as long as they stayed within site-wide emission caps. The lawsuit's effect may well be to prevent emissions-reducing upgrades in old plants. ▪

No confidence in nonprofits

Doubt, Despair, and Charity

Julian Sanchez

EVEN AS PUBLIC confidence in government institutions has skyrocketed in the wake of the 9/11 attacks, faith in charitable organizations has dropped precipitously, according to a recent Brookings Institution study.

The report, which relies on

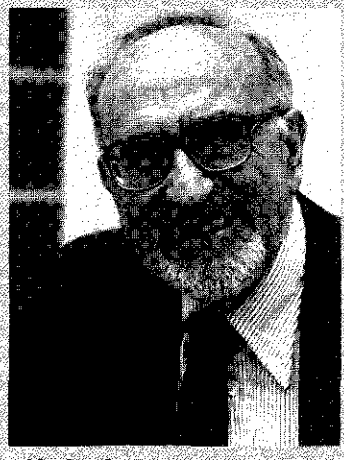
LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

surveys conducted by the Center for Public Service, found that "the percentage of Americans who said they had 'a lot' of confidence in charitable organizations fell from 25 percent in July 2001 to 18 percent in May 2002 while the percentage who said they had 'none' rose from 8 percent to 17 percent." The study's author, Paul C. Light, a professor of public service at New York University, attributes the change to numerous scandals at high-profile nonprofits such as the United Way, the Red Cross, and the Nature Conservancy, as well as charities' generally lackluster response to 9/11.

But while Light sees this new distrust of charities as a problem, nonprofit critic Theresa Funiciello, author of *Tyranny of Kindness* (Atlantic Monthly Press), regards it as long overdue. "After 9/11," she says, "people got a close look at how these institutions operate. After the first or second generation, most of them have lost sight of their original purpose; the money coming in goes to perpetuate and serve the interests of the institution." ▯

The Deregulator

Julian Sanchez



Alfred Kahn

As head of the Civil Aeronautics Board in the '70s, Alfred Kahn, once an interventionist, opened air travel to competition. In *Lessons From Deregulation: Telecommunications and Airlines After the Crunch*, published last year by the AEI-Brookings Joint Center for Regulatory Studies, Kahn assesses the deregulatory legacy. He spoke with Assistant Editor Julian Sanchez in January.

Q: Why did *Consumer Reports* claim in 2002 that deregulation failed?

A: The benefit of deregulation has been the direct savings to consumers. Airline consumers have saved over $20 billion per year, which has brought air travel within reach of people of modest means.

Consumer Reports didn't deny that rates had fallen. They just argued that rates had already been falling before deregulation. But you had had huge technical innovation then, especially during the '50s, when the propeller engine was replaced by the jet engine, and nothing of comparable magnitude later. All you have to do is look at the introduction of discounting in the '70s and '80s. Before, maybe 15 percent of air travel was discount fares. After, it was about 90 percent. You have to be willing to deny the nose on your face not to see that it was competition that created this revolution.

Q: What do you make of Howard Dean's call for a massive "reregulation" of American industry?

A: I'm distressed, particularly since I'm sympathetic to Dean. He's responding to a general revulsion against competition, especially foreign competition, which puts pressure on high wage earners. The isolation from competition in the airlines, for example, led to wages high above what the competitive level would have been. Monopoly profits can be earned not just by companies but by workers—not so much the flight attendants but the mechanics and pilots. I've heard a pilot express regret that I had recovered from a recent car accident!

Q: Do we need regulation to prevent network infrastructure owners from controlling online content?

A: I'm sympathetic to the argument that control over access to the Internet might be abused. But we've got a severe dilemma: The industry is confronting costs of tens of billions per year in infrastructure deployment. The introduction of regulations requiring them from the outset to make their facilities available to competitors at ridiculous rates threatens to kill the goose that is laying the golden egg. And you've got real competition between DSL and cable. It seems to me that government should be very cautious about entering markets where so much innovation is going on.

Choked by choice?

Option Overload

Charles Paul Freund

"So I said I want a pair of jeans, size 32-28," author Barry Schwartz said recently on PBS, "and the salesperson said, 'Well, do you want slim fit, relaxed fit, easy fit? Do you want wide boot cut, wide leg, peg leg? Do you want acid washed, stone washed, regular?' You know, I realized that I was spending an hour trying to do something that used to take me five minutes."

Schwartz, a psychologist, has concluded that proliferating consumer choice is an unrecognized mental health problem. According to his book *The Paradox of Choice: Why More Is Less* (Ecco), the costs to consumers of market choices can outweigh the apparent benefits, and not merely in terms of time. If you are a "satisficer," you'll search around in the market for a "good enough" choice that meets your needs, and you'll probably be happy with it. But if you are a "maximizer" seeking the "best" choice, the market will overwhelm you.

Capitalism has been attacked for the supposedly superfluous products it generates (as in "Who needs 25 different flavors of oatmeal?"). Schwartz's approach, which has drawn attention from both highbrow and lowbrow media outlets, is almost refreshing, because it suggests that the critique is degenerating (or evolving) into service journalism.

The argument about efficiency and waste has been displaced by advice for people who have trouble making choices. Schwartz's advice: If you're a maximizer, give it up. Some decisions are worth more time and effort than others; you should choose between choices. If you think such advice will help you, Schwartz's publisher will take your $23.95. ▯

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Hack Roast

When citizens attack...reporters

On November 30, 1999, Al Gore told a high school class in New Hampshire about how, 20 years earlier, a girl their age had informed his congressional office about toxic waste problems in her hometown of Toone, Tennessee. The resulting Capitol Hill hearings, which Gore sponsored, also investigated a much more famous polluted area of upstate New York called Love Canal. "Toone, Tennessee—that was the one that you didn't hear of," the then-vice president told the Granite State students. "But that was the one that started it all."

The next day, both *The Washington Post* and *The New York Times* changed the wording of that last quote, replacing "But that" with "I," making it seem as though Gore was trying to take credit for discovering the Love Canal disaster. Hours later, Republican National Committee Chairman Jim Nicholson issued a press release blasting Gore for his "pattern of phoniness" while mutating the quote still further: "I was the one who started it all," the alleged remark now read.

Even though the *Times* and *Post* both ended up running corrections more than a week later (under duress from the outraged high schoolers), and several media critics eventually deconstructed the tale, the story of Al Gore "discovering" the Love Canal became a fixture in Campaign 2000, to be repeated in several hundred newspapers and on every major news network in America.

In 2004 it's much harder to get away with such shaggy-dog reporting, thanks to a tidal wave of amateur online media criticism that has finally started to break into professional newsrooms. On January 4, for example, Associated Press reporter Nedra Pickler transformed a legitimate Howard Dean debate point ("I opposed the Iraq War; with the exception of Dennis [Kucinich] and Carol [Moseley Braun], everybody else supported it") into a lie: "I opposed the Iraq War when everybody else up here was for it." The misquote was picked up by *The Washington Post*, the *Chicago Sun-Times*, and dozens of other newspapers, but it was also flagged by several pro-Dean sites and the popular blog *Daily Kos*. Within a few days Pickler acknowledged the error, the AP ran a correction, and a potential urban legend about Dean's intemperate fabulism was strangled in the crib.

The 2000 and even 1996 presidential circuses were already pestered by online media critics and citizen dart blowers—the Gore–Love Canal story was dismantled in real time by D.C. comedian Bob Somerby, who edits the invaluable *Daily Howler* site—but this year several new factors have thrust the kibitzers inside the mainstream news cycle. Web strategy is now central, not marginal, to the campaigns; political weblogs have continued their spectacular growth; and the scrutinizers' gazes have shifted from the op-ed pages and weekend gabfests to the nuts-and-bolts reporting itself.

This last change in emphasis has coincided with a spike in professional news organizations' appetite for blogger-style media criticism. Both trends are illustrated by the changing fortunes of 25-year-old Bryan Keefer.

In April 2001 Keefer, his high school chum Brendan Nyhan, and Nyhan's college buddy Ben Fritz launched a site called Spinsanity.org, "dedicated to tracking and analyzing the increasingly pervasive form of spin that we believe is corroding American political discourse." Although the startlingly earnest editors "all have been politically active in Democratic and progressive politics" (as they dutifully disclose), the site has been scrupulously nonpartisan in

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

its debunking of media myths and lancing of rhetorical hyperbole, from Michael Moore and Robert Scheer to Ann Coulter and Sean Hannity. Keefer's creation has become a valued resource, but aside from a small syndication deal with *Salon*, professional appreciation of *Spinsanity* has mostly been limited to the currency of citations.

Until January of this year, that is. That's when *The Philadelphia Inquirer* began running a weekly column of original *Spinsanity* material on its op-ed page, and when Keefer started working full-time as the assistant managing editor of a brand new journalism-parsing weblog called *The Campaign Desk* (campaigndesk.org), published by the ivory toweristas at the *Columbia Journalism Review*.

With a paid staff of five (expected soon to reach seven) and funding from the Rockefeller Foundation, *The Campaign Desk* might well be the largest and most expensive weblog published by a professional American news organization. "The hope," says Keefer, "is to bring...the prestige of the magazine, and combine that with the best features of the Internet." He wants the site to be critical of reporters, but also to "issue praise when we think it's deserved, as well as serve as a resource to keep other reporters from making the same mistakes."

The M.O. might sound a little Church Ladyish, but the site was surprisingly jocular and useful after only two weeks, busting reporters for failing to reveal that their "impartial" political-observer sources had backed specific Democrats, tracking down disputed candidate quotes, needling commentators for using absolutes such as *never* and *always*, and so on. Small beer, mostly, but every drop applies more public pressure on journalists to do a better job.

With the *Spinsanity* guys, the question was never "Are they ready for prime time?" but "Why doesn't every newsroom with more than 100 employees have a built-in *Spinsanity*?" After all, newspaper journalists never tire of reminding cynical outsiders about their hard-earned "credibility" and well-trained bullshit-detecting skills. And since newspaper profit margins still exceed 20 percent on average, why not deploy these remarkable resources to tell readers whether their favorite authors or columnists or politicians are full of it?

Keefer theorizes that "reporters really don't...evaluate the truthfulness of their subject." He says that's in part because they're taught in journalism school that to be balanced you have to represent both sides fairly. "They're good at picking up when someone's obviously lying, but what they're not good at is picking up the sort of fudges that people do." John Timpane, the *Inquirer* editor who made the deal with *Spinsanity*, says newspapers "are fighting a losing battle, partly because there's so much stuff [to fact-check] and partly because they're all understaffed....That's not a defense, because we should do a much better job than we do."

Or maybe professionally nonpartisan institutions just aren't the best generators of the political passion that fuels so much amateur media criticism. Both Keefer and Timpane are unusually committed to the elevation of reason over rhetoric. Keefer studied history at Stanford under professors who believed "it's not all subjective impressions; it's not just however you feel or whatever; there really are facts." And Timpane, a former English professor who taught at Rutgers, Stanford, and elsewhere, co-wrote *Writing Worth Reading*, a textbook that included a large section on "how to avoid the pitfalls of easy argumentation and how to make a strong argument without making some of the errors, like...name-calling."

This January, while Keefer and *Spinsanity* were enjoying their breakthrough month, a group of mostly lefty webloggers created an "Adopt-a-Journalist" movement, whereby individual campaign reporters would be tracked daily for signs of bias and sloppiness. Journalists who have a "watch blog" attached to their hides now include the aforementioned Nedra Pickler, her AP colleague Calvin Woodward, Reuters' Patricia Wilson, *The New York Times*' Jodi Wilgoren, and *The Washington Post*'s Dan Balz and Cecil Connolly, among others. Commentary on these blogs ranges from the fair-minded to the cruel, but without the political motivation there probably wouldn't be any "watching" at all.

This manic drive toward maximum transparency may seem like overkill in an age where we can watch several hours' worth of candidates' speeches every day on C-SPAN, read hundreds of pages of detailed policy plans, and see a lifetime of voting records sliced up and analyzed every which way. But when citizens become journalists, and journalists become accountable, the biggest losers will eventually be politicians with something to hide. ▯

Contributing Editor Matt Welch (mwelch@reason.com) writes about media and politics for Canada's National Post.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Abuse Revisited

A feminist challenges the conventional wisdom about domestic violence.

FOR 15 YEARS or so, a fairly straightforward paradigm has dominated mainstream thinking about domestic violence policies. According to this conventional wisdom, domestic violence should not be treated as a "family problem," the way it often was in the past, but as a crime—one perpetrated primarily by men against women. (To this, the feminist analysis adds that men use violence as a deliberate strategy to subjugate women.) The proper response to the problem, we are told, is to lock up and perhaps re-educate violent men while helping women get out of violent relationships.

Following this thinking, numerous jurisdictions and states passed laws that mandated arrests for domestic assault (treating such violence as not just equal to but more serious than non-domestic assaults, since no arrest is mandated in such cases) and encouraged prosecutions even when the alleged victim was unwilling to press charges.

The Violence Against Women Act, passed by Congress in 1994, institutionalized the traditional feminist view of family violence on a federal level, with grants for law enforcement, counseling, and judicial training programs based on the assumption that domestic violence involves male power and control over women and is best stopped by subjecting the perpetrator to the power and control of the state. Like the campaign against pornography, this policy shift represented a strange marriage of radical feminism to law-and-order conservatism.

There were always dissenting voices. Researchers such as Murray Straus of the University of New Hampshire and Richard Gelles of the University of Rhode Island have argued that domestic abuse has complicated dynamics, often involving female as well as male violence. Criminologists such as Lawrence Sherman of the University of Maryland have cautioned that in many situations, mandatory arrest for domestic assault does not lead to a reduction in violence and could even cause it to escalate. Journalists, including myself, have covered cases of men and women who were caught up in the criminal justice system and either labeled as abusers on spurious pretexts or treated as victims when they felt more victimized by the system than by their partners.

Now Princeton University Press has published a fascinating new book by Linda G. Mills, *Insult to Injury: Rethinking Our Responses to Intimate Abuse*, which provides a strong boost for the dissenters' views. It is all the more impressive since Mills, a professor of social work at New York University who also teaches at the NYU School of Law, has solid feminist credentials. The 45-year-old scholar has spent a decade working on behalf of battered women. Moreover, as she reveals in her book, she herself was once in an abusive relationship.

Relying on studies and case histories, Mills concludes that using the "big stick" of the law as our dominant (or only) response to domestic violence ill-serves both women and men: "Using one approach only—beating the batterer and ignoring the wishes of the intimate partner—is hardly the route to diminishing violence." The orthodox feminist paradigm, Mills writes, ignores not only women's violence (in both heterosexual and same-sex relationships) but also the complexities in the lives and attitudes of women who are abused.

Studies show that half of the women who go to shelters later return to their partners; prosecutors estimate that over half of the victims in domestic assault cases are uncooperative.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

To Mills, it is a mistake to view these women simply as "passive prisoners" of male power and patriarchal socialization. Often, "They stay because they have an intimate relationship with and emotional attachment to their partners, their children, and the life they have built." To take crucial decisions about prosecuting a case out of these women's hands serves only to disempower them and to deny their personal agency.

Mills notes that orthodox feminists "argue that abusive men do not acknowledge their own power and should be accountable for it. Yet they, too, are guilty of the same behavior" when they force their ideology on unwilling women who are subjected to interventions by the criminal justice system.

Mills' book is not without flaws, and some aspects of her approach may undercut her case. Among these is an extremely broad definition of violence that renders the term almost meaningless. "I think [violence] exists along a continuum that includes emotional, financial, physical, and sexual violence," she writes. "My premise is that we have all experienced intimate violence."

Oddly, Mills accuses the orthodox feminists of uncoupling physical and emotional abuse and focusing only on physical abuse as an appropriate area of legal intervention. In fact, feminist literature—including pamphlets in domestic violence programs—often specifies that abuse need not be "physical" but can be verbal or psychological as well.

The real problem is the double standard. Verbal abuse by men is seen as part of a continuum of abuse, even as a justification for physical violence by women. Meanwhile, feminist dogma holds that verbal abuse by women never justifies violence by men.

Mills' laudable desire to look at women's aggression leads her, on occasion, to some strange places. Looking back at her own relationship many years ago with a man whose violence ranged from punches to forceful shoving to rape, she discusses her recent realization that she too contributed to the dynamic of abuse, even though she "cannot specifically identify the ways I set off his violence." Such a statement can only lend support to those who would accuse her of blaming victims and excusing batterers.

Taking crucial decisions about prosecuting domestic violence cases away from the women involved serves only to deny their personal agency.

The real strength of Mills' book lies in her repudiation of a one-size-fits-all approach to domestic violence. She points out that in some cases, aggressive police and court intervention is appropriate, either because victims and/or their families want it or because there is a "great risk of harm."

Early in the book, she stresses the importance of making a distinction between the far end of the domestic violence spectrum involving one, usually male, partner's terrorism against the other, and the more common dynamics of couple violence. This commendable effort to distinguish different types of violent situations runs counter to her later attempt to squeeze virtually all intimate violence into the paradigm of a mutual dynamic of abuse and onto a single unbroken continuum.

Of great value as well is her emphasis on listening to the victims and allowing them, as much as possible, to control their fate: Except in severe and potentially life-threatening cases, she writes, "a woman should be free to choose her own intimate and family destinies, with or without criminal sanctions."

As an alternative to wholesale criminalization, Mills suggests "Intimate Abuse Assessment Teams," made up of mental health professionals who could evaluate the situation of a couple in a violent relationship, and "Intimate Abuse Circles," in which the couple could talk things out with the help of therapists, relatives, and community members.

Such a proposal has its own pitfalls: It's easy to imagine the practice degenerating into psychobabble that blames all violent acts on the perpetrator's unfortunate childhood or poor communication. But at the very least Mills' proposal is a welcome alternative to the present-day situation in which joint counseling is often prohibited as an option for couples involved in the criminal justice system.

As a new dogma, Mills' viewpoint would be problematic. As a challenge to current dogma, it is a breath of fresh air. One can only hope that its alternative message will be heard in the courses and seminars held across the country to educate counselors, law enforcement, and judges about domestic violence. ▯

Contributing Editor Cathy Young (CathyYoung1@cs.com) is a columnist for The Boston Globe and the author of Ceasefire! Why Women and Men Must Join Forces to Achieve True Equality (Free Press).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Peter Bagge

PLAYING to the TOTALITARIAN LEFT

TWO DEMOCRATIC CANDIDATES APPEAL TO THEIR PARTY'S "CORE," BY PETER BAGGE 2004

MY WORTHY OPPONENT TRIES TO COME OFF AS A "PROGRESSIVE" WHEN HE'S ANYTHING BUT...
IN FACT, HE EVEN OPPOSES GUN CONTROL.
THAT, SIR, IS A GROSS MISINTERPRETATION OF MY RECORD...
I SIMPLY EXPRESSED SYMPATHY FOR SOMEONE WHO USED A STUN GUN TO DEFEND HIMSELF AGAINST A GANG OF HEAVILY ARMED HOMICIDAL MANIACS...
WHICH ONE COULD ARGUE WAS WITHIN HIS CONSTITUTIONAL RIGHTS.
NONSENSE. IT'S A KNOWN FACT THAT THE FOUNDING FATHERS WERE DRUNK WHEN THEY WROTE THE 2nd AMENDMENT.
AHH, BUT IT WAS YOU, SENATOR, WHO ONCE PROPOSED REDUCING THE SIZE OF SEVERAL KEY FEDERAL AGENCIES...
INCLUDING THE ALL-IMPORTANT "OFFICE FOR THE REDUCTION OF THE SIZE OF FEDERAL AGENCIES"!
WITH ALL DUE RESPECT, GOVERNOR, YOUR "INFORMATION FLOW" IS SERIOUSLY BACKED UP...
I WAS SIMPLY PAINTING A HYPOTHETICAL SCENARIO TO ILLUSTRATE WHAT COULD HAPPEN IF WE WERE AT THE MERCY OF SOME IRRESPONSIBLE BUDGET-TRIMMER LIKE YOU...
WHILE I'M THE ONLY CANDIDATE PRESENT WHO WHOLE-HEARTEDLY FAVORS PILING ON NEW ENTITLEMENTS LIKE THERE'S NO TOMORROW!
THIS IS AN OUTRAGE! I'VE BEEN BESMIRCHED!
AND YOU FAILED TO OPPOSE THE RECENT MEDICARE BILL WHEN IT FAILED TO GOBBLE UP OUR ECONOMY WHOLE LIKE IT SHOULD HAVE!
SENATOR, I CONSIDER YOU A FRIEND, BUT IF YOU'RE INSINUATING THAT I DOUBT THE FEDERAL GOVERNMENT'S ABILITY TO PROVIDE FOR OUR EVERY WANT AND NEED THEN YOU'RE THE ONE WHOSE "INFORMATION FLOW" COULD USE A SUPPOSITORY!
NO ONE HERE IS MORE IN FAVOR OF BIG GOVERNMENT AND AGAINST FREE TRADE OR CONCERNED ABOUT CHILDHOOD OBESITY OR OUTRAGED OVER SPAM THAN I AM! NO ONE! IEE-GAH!
LOOK! LOOK AT HOW ANGRY HE IS! DO YOU WANT THIS HOTHEAD IN CHARGE OF EVERY SINGLE ASPECT OF YOUR ENTIRE LIFE?
I THINK NOT!
WOULD EITHER OF YOU SUPPORT THE OTHER'S CANDIDACY SHOULD HE WIN THE NOMINATION?
OF COURSE.

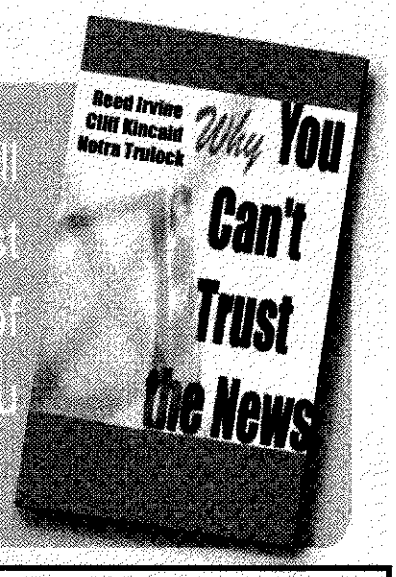
LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

GET THE TRUTH THE LIBERAL MEDIA LEAVE OUT

JOIN ACCURACY IN MEDIA TODAY AND GET THE AIM REPORT

The AIM Report, published by Accuracy in Media, could be your best antidote to media bias. In every issue we dissect and analyze the stories of the day and ferret out the truth. Recent issues have dealt with intelligence failure, the war in Iraq and the scandal at the New York Times that forced two top editors to resign.

If you join Accuracy in Media today for just $40 we'll give you our best selling book "Why you can't Trust the News" as a bonus for free! That's 24 issues of our newsletter, the AIM Report plus the book if you act now!



Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Charge my Visa or Mastercard Account: _____

Check Enclosed: _____

☐ $6.95 - single copy. ☐ $19.95 - 5 copies ☐ $150 - 50 copies.

☐ $250 - 100 copies. ☐ $40 AIM membership (free book)

☐ $____ - Tax deductible donation to distribute books to the media

RM - 0104

Call **1- 800 -787-4567 x 110** to order | Accuracy in Media | 4455 Connecticut Ave. NW. # 330 | Washington D.C. 20008

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Free Play

The politics of the video game

Kevin Parker

In 1979 kids and their quarters descended on convenience stores and shopping malls to experience the latest in digital entertainment: breaking rocks. The video game *Asteroids* boasted that its "explosions, laser blasts, [and] fragmentation of space debris" were "realistic," and by the standards of the day they were.

A quarter century later, as you'd expect, game pyrotechnics are much more advanced. But so is something that was harder to predict. Arcade action is being upstaged by social simulation.

Asheron's Call 2, Microsoft's online fantasy game, boasts a new kind of realism: "an economy of, by, and for the players." And it's not alone: Many Internet-based games now facilitate market economies, political factions, and even elections. Player groups, often called clans or guilds, have emerged as popular tools for protection, cooperative adventuring, and simple bloodsport. And while game developers are now doing what they can to support those online clans, their efforts often have been a matter of catching up with what players already were arranging on their own.

Like movies, novels, and plays before them, computer games have discovered politics. Even the pure, plot-driven action that remains often comes attached to heavily politicized back-stories. Take a stroll down the game aisle:

• Despite its name and tenor, *Gore* was published by DreamCatcher Interactive, not the former vice president. "In the mid-21st century," DreamCatcher's Web site explains, "massive overpopulation and consumption caused irreversible resource shortages over most of the planet. All supplies of fossil fuels were completely decimated by 2031. The agro-mosaic virus outbreak of 2042 triggered the global food riots of 2043 by causing the extinction of all agricultural plant species. Five billion humans, almost half of the Earth's population, died of starvation." Weighty stuff for an effort one reviewer characterized as a "mindless arcade shooter."

• *Legacy Online* (Sega), originally titled *Star Peace*, is a multiplayer online game in which participants can be elected to political office. It also claims to have an "extremely realistic" economy. Here is *PC Gameworld*'s description of the setting: "Earth is dying. Greed, global warming, nuclear and chemical pollution, ethnic wars, new virulent viruses and super bacteria, overpopulation—the World's population has doubled again, in just 20 years...." The player's most powerful tool is not the laser gun but the zoning ordinance. Once elected mayor, the designers declare, "you can really direct a town's development...from a disorganized mess to a beautiful urban landscape." Mayors can also "set the minimum wage for [the] entire workforce, thus putting [an] end to the greedy behavior of the local tycoons."

• In the soundtrack-heavy skating and graffiti-tagging game *Jet Set Radio Future* (Sega), pirate radio DJ Professor K helps the "cool kids fight off the evildoers that want to take their freedom." The chief evildoer in this case is the CEO of a huge corporation that has bought the police and attempts to dominate Tokyo. In the cel-shaded world of this game, "freedom is a valuable commodity, and freedom of expression is even more so."

Political ideas are infiltrating not just the back-stories of games but their "play mechanics"—the inner workings that shape game behavior. It may be the scripted parts of the games that explicitly state political notions, but what's

A human and a Tumerok prepare for adventure on a rainy day in *Asheron's Call 2*. *Fallen Kings*, courtesy Turbine Entertainment

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ultimately more significant is the way games can communicate doctrine by demonstration, the same way sports communicate physics. As *Salon*'s Wagner James Au once put it, "Socially minded films and television programs can only dramatize their politics, but we now have a medium where you can interact with them, as an engaged participant." If cinematic spectacle grabs eyeballs, then gameplay grabs minds.

The results may not be what the gamemakers intended. Designers are responding to the demand for compelling interaction by providing more logically consistent game worlds and relaxing linear story structure to allow for more player control. As a result, players are freer to explore and experiment without encountering as many contrived game rules. Indeed, discovering the rules becomes a much-discussed game within the game. Built-in political assumptions will be subject to the same distributed criticism.

Game Rules

Meanwhile, as games shift from pre-rendered animation and simple behavior to physical modeling and advanced artificial intelligence, players find that this new realism further relaxes limits and expands gameplay. It takes power from authors—to break rules, control pace, and manage plots—and gives to players a more coherent world of places, people, and things. The product is more toy than movie, more sandbox than story. Video games are evolving into a grand anti-authoritarian laboratory.

Writing in *The American Prospect* a decade ago, the prescient Princeton sociologist Paul Starr recounted his thoughts while playing Maxis' city management game *SimCity 2000* with his daughter. The wildly popular *SimCity*, which spawned the ongoing franchise, puts players in near-total political control of a city, viewed from above. It then tracks their success at developing the city and keeping the simulated citizens ("Sims") employed and content. "What assumptions were buried in the underlying models?" fretted Starr. "What was their 'hidden curriculum'? Did a conservative or a liberal determine the response to changes in tax rates in SimCity?" Starr concluded that the game contained dubious assumptions but no grander agenda, except perhaps the notion of managing something as complex as a city by monitoring "data streams." The most interesting thing about his essay, though, is that someone would ask such questions about a game at all.

Certain rules are embedded—sometimes consciously, sometimes not—in video games. What are these rules? The question may become a refrain, at least for perceptive parents and teachers, because games can communicate ideas not merely through exposition but through the experience of playing them.

Political economy is a natural frontier for gaming. As some PlayStation-savvy Marxists have noted, many games incorporate "simulacra" of work and exchange. (In postmodern jargon, a simulacrum is a copy of an original that never existed—Disneyland's Main Street, for instance.) We don't slay the dragon or blast the alien just for the fun of it. There's treasure in that thar dungeon or asteroid! Newer games are asking, What do we do with the booty?

Quite a bit. Multiplayer online games routinely feature emergent economies. Programmers, absorbed in the business of turning imagined ogres, grenade launchers, and nebular vistas into stable computer code, now find themselves puzzling over inflation, product shortages, and property disputes. Just how realistic the economic models should be is a topic of continuing debate. But at least one development house, Artifact Entertainment, actually hired an economist to assist with its modeling.

Such drastic measures aside, some offline games—*Capitalism II*, *Zapitalism*, *The Corporate Machine*—attend to economic phenomena even more than their Net-based cohorts do. Yet while many online games reserve a role for their thousands of individual players in influencing prices and other outputs, solo titles have tended toward neighborhood-level (or "tile-based") models. The *SimCity* games, indulgence of planners everywhere, don't "actually compute the reactions of each individual," writes Robert Axtell of the Brookings Institution. "Instead, they use equations to average out how groups behave." Last year's *SimCity 4* did add the ability to drop in individual "Sims" from Maxis' other blockbuster series, *The Sims*, a "virtual dollhouse" which lets players micromanage characters' daily lives. Since these transplants serve mainly as gauges of a neighborhood's prosperity, they are merely a symbolic step toward individual-based simulation.

Other new games, however, suggest a trend away from group-level models. *Tropico* (Gathering of Developers), in which the player strives to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Political economy is a natural frontier for gaming. We don't slay the dragon or blast the alien just for the fun of it. There's treasure in that thar dungeon or asteroid! Newer games are asking, What do we do with the booty?

maintain control over a banana republic, tracks the daily lives and emotions of hundreds of unique citizens. In *Republic: The Revolution* (Eidos Interactive), the objective is to overthrow the oppressive government of fictional Novistrana. How? In part, by recruiting from up to 1 million individually named citizens, each—to quote the developer's Web site—with "their own set of beliefs, emotions, skills and loyalties." This isn't an online game. The citizens all come in the box.

And while *SimCity* lags, the company that makes it has planned to join the individualist revolution by other means. *Newsweek* reported in 2002 that the designers of *The Sims Online* intend to "hand the economy and the governing structure over to the subscribers, so that each city effectively becomes a SimCity controlled by its players." This has not happened yet, perhaps in part because Maxis has met with unexpected difficulty preventing an explosion of vice, crime, and vigilantism in the new game's environs. (See "Hobbes in Cyberspace," page 55.) But given the chance, would subscribers adopt laws like the strict zoning inherent in the original? And if they don't, will *SimCity*-loving high school teachers and urban planning professors patronize *The Sims Online*, or will they stick with its less democratic predecessors?

Environmentalism, technocratic planning, self-organizing systems—every cause and school of thought with a cultural pulse and a few gigs of hard drive space finds promise in this new form. The socialist writer Barbara Garson has said she wants to "explain globalization...through a game." And Ted Friedman, a professor of cultural studies at Georgia State, writes that it's "easy to imagine" a computer game based on Marx's *Capital*, though he does not elucidate this vision for his readers.

Free the Gamers!

In theory, the easiest way to graft an ideology onto a game is through the story, as with the post-apocalyptic backdrop to *Gore*. In practice, it's not so simple. Facile analogies to the movies have concealed a deep tension between game play and narrative.

Storytelling has so possessed game design that, with the exception of sports, racing, and a few other genres, it is rare for major titles to forego extensive script and character development. But while stories can supply context and direction, they are *told*, not played. Full-motion video became reviled by many gamers in the mid-'90s for periodically butting in to tell unevenly produced story-snippets. Though visually striking, such vignettes tend to clash stylistically with game graphics. But the real downside is that they seize control from the player. One moment he is guiding the main character's actions; a moment later that power is frozen while a video clip plays. If the protagonist does something during the scene that the player would rather not have done, that is considered an acceptable cost of telling the story.

Like locked doors and other plot-regulating devices, such "cut scenes" chafe players who are ready for action. In his 2001 book *Game Design: Theory & Practice*, Richard Rouse III counsels developers to avoid linear design for a deeper reason. "If the player wants to replay the game again, that is fine, but the primary goal of non-linearity is to surrender some degree of authorship to the player." Linear stories are the governors of game worlds. They tell you who you are, what you seek, and how you might succeed. Players go along, some happily, others yawningly—or they take control in the real world by turning the game off.

Yet there is a continual drumbeat for games to be more like movies. The intent is not simply to include more film

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Environmentalism, technocratic planning, self-organizing systems—every cause and school of thought with a cultural pulse and a few gigs of hard drive space finds promise in this new form.

clips, but to make gameplay itself more cinematic. Pressure comes from journalists reporting on game/movie deals, and from observers and game developers themselves, who for a variety of reasons see cinematic games as the next step in game evolution. One session at last year's Game Developers Conference was titled "Story and Gameplay Are One." Indeed, while many in the industry speak highly of nonlinear approaches, other reviewers and developers stress the importance of a game's story above almost any quality except "fun."

Whatever the shape of the theoretical dispute, today's gamers are finding new freedom from constraining storylines. *The Sims*, that dishwashing, interior-decorating, hot-tubbing juggernaut, offers no story to unify all the simulated shopping and flirting. (What stories do exist are entirely player-generated: Some people write *Sims* fan fiction.) *The Elder Scrolls III: Morrowind*, the latest fantasy role-playing title from the publisher-developer Bethesda, was hyped in part because of the autonomy it grants players. *Morrowind* does have an epic storyline, but the player has unusual freedom to tackle unrelated challenges and even to ignore the main plot—or to continue playing after the story has wrapped up.

Likewise, Microsoft's *Freelancer* is "specifically structured" to offer both a story and an open-ended universe. At least two games, *Vampire: The Masquerade* (Activision) and *Neverwinter Nights* (Atari), allow users to be "game masters" for groups of players, providing them with architectural tools and control of all game events save the players' own actions. This role was originally created by the gaming legend Gary Gygax for the original pen-and-paper role-playing game, *Dungeons & Dragons*. For his part, Gygax has said storytelling "has little or no connection" to role-playing games, which differ "in all aspects" from novels, films, and other narrative arts.

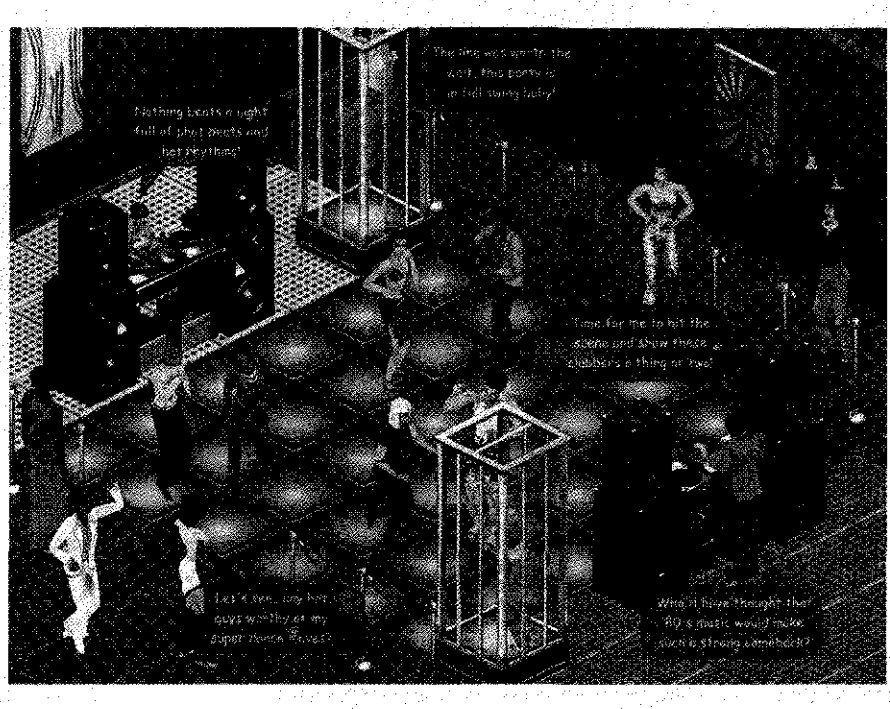
Finally, there is the top-selling game of 2001, the infamous crime romp *Grand Theft Auto III*, by Rockstar Games, which sets players loose in Liberty City ("America's worst city," the publishers say) to tackle the plot-advancing missions only when and if they want to. ABC's *Nightline* homed in on *GTA3*'s graphic violence in a 2002 program pitting a 17-year-old gamer against a police veteran and a child development academic who was already sure media violence begets the real thing. By focusing on the superficial, they missed what is truly revolutionary about the game.

The players didn't. "The only controversy should have been explaining why it took the industry so long to design such a brilliantly free-form game," *PC Gamer* asserts. Robert Holt's review for National Public Radio stresses the depth of the simulated city. "Sure, there's a quest in there," he says, "but the larger world is what makes this such a rich experience." Interestingly, players begin both *GTA3* and *Morrowind* in the role of a freed prisoner. Captive audience no longer.

Playing with the Real

Twitchy kids with little patience for stories are not the only kink in the railroad to cinematic game design. Realism has become an ever-present selling point in the gaming press and on game packaging—not merely realistically rendered detail but a deeper sort of reality: a world with more consistent rules, more room for autonomous behavior, and therefore more resemblance to the outside universe. For games, "realism" means not only that graphics have leaped into fluid 3D but also that sound, physics, and character behavior have advanced in kind.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED


Nothing beats a night full of phat parts and hot rhythm!
Time for me to hit the scene and show these clubbers a thing or two!
Let's see, any hot guys worthy of my super moves?
What I have thought that 80's music would make such a strong comeback?

The Sims Online, courtesy Maxis

Programmers of the 1980s added color to computer games, but they could scarcely anticipate sound reflection, complex friction models, and flocking behavior—all now stock in trade for the industry.

Realism replaces micromanagement with player responsibility. Traditional designs have players guessing what solution the designer had in mind for each obstacle—"a huge buzz-kill when playing a game," says Holt. Some newer games, sporting realistic physics models, simply set victory conditions and let players find solutions through trial and error, logic and innovation. Designers of free-form games cannot assume that all the players will solve problems the same way in the same order. Such a diversity of outcomes makes it hard to impart the cinematic touch.

Writing in *Wired* about such physics simulations, Mark Frauenfelder notes that most game objects "act as though they've been painted on a theater backdrop. If you try to use them, the facade falls down." But with real-time physics, players can use objects in ways they might try in the real world. Subjecting what was formerly scenery or props to believable interaction draws players in and gives them yet more control. It can also lead to unexpected results. Frauenfelder cites the technique of "rocket jumping" in the popular 1996 game *Quake* (id Software): Players shoot a rocket at the ground and ride the shockwave to otherwise inaccessible heights.

Games are not simply another channel through which artists communicate but a means by which individuals take control. That control is brought to bear in a new and dynamic community where no topic, assumption, icon, or milieu is entirely safe from scrutiny.

Because they want fun, not lectures, players have been known to skip scripted scenes—or to wreck them just to see what will happen. Well-designed games get back on track despite such mischief, but they can't force an indifferent player to pay attention to the story. My father has played the war game *Red Alert* (Virgin) and its sequels for years but has never tackled the scripted missions. Instead, he plays in "skirmish" mode, which delivers strategic challenges without the movie clips or story. He never finds out who ends up ruling the world, nor does he seem too concerned about it.

Or consider *State of Emergency* (Rockstar Games), a putatively radical riot simulator. In *Salon*, Wagner James Au quotes a man who searched for some sign of game-inspired political expression on a popular Internet bulletin board. Instead he found "a lot of posters begging for the code that makes people's heads pop off when you punch them." Another critic writes, "*State of Emergency* is all about rioting and the story just gives you a reason to bust some heads." With the rise of open-ended games, it becomes even less certain that injected story lines will reach their audience.

So implicit politics might be the better way to influence player opinion. But as a political vehicle, games may have an inherent bias. Bridging an ideological chasm, libertarian Iain Smedley and socialist Julian Stallabras agree that computer games possess a native individualism. Writing a decade ago, Smedley noted the "heroic and individualistic philosophy" of video games, in which the player "does not merely cheer on the hero in [his] struggle; the player's actions determine the outcome." Writing contemporaneously in *New Left Review*, Stallabras concurred: In games, "the passivity of cinema and television is replaced by an environment in which the player's actions have a direct, immediate consequence on the virtual world." For Stal-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

labras, this makes computer games "a capitalist and deeply conservative form of culture."

Game Realism

Stallabras' wide-ranging indictment of computer games is remarkable for its combination of savvy ("in *Doom*...all the corpses of a particular monster always look exactly the same") and pessimism ("The defining image in all this comes, not from any game, but naturally enough from a blockbuster film, *Terminator 2*; it is the jarring crunch of human skulls under the bright chrome of a robot foot"). Stallabras contends that many offensive traits of games are concealed by "chrome," by which he means slick user interfaces and graphical eye candy. What would he think of the recent release whose *title* is *Chrome*? Probably the same thing he writes about the video game as a medium: that it tricks players into imitating idealized markets and sweatshop labor through repetitive manipulation of game objects and numbers, that it is shaped by "the parameters of the computer industry's links with the military," and that its innate objectification "leads to...an ever greater blurring of the use of people as instruments in the world and the game." But he might appreciate the irony that *Chrome* developer Techland is located in Poland.

Computer games, as a class, do appear to favor civil and economic liberty—not because they simulate sweatshops (no more so than, say, music lessons do) or capitalist exchange but because of the same human tendencies that free players from domineering storylines and inflexible rules. Games naturally turn players against contrived limits and inconsistencies. And this mind-set necessarily takes on a political aspect as games themselves grow more political.

While storytelling games use film clips and unrealistic physics to control plot and pace, politicized games use simulated laws. But there is little reason to suppose players will enjoy barriers more when they're expressed in legal terms. This is not to deny that players like exercising power over others, as violent 3D action games and civilization-building "God games" attest. But just as gamers do not cotton to cartoon physics in their gritty military simulations, so will they frown on obviously broken market mechanisms, whether hauling goods between planets in *Freelancer* or, like one reviewer, trying to revive an abandoned industrial sector in *SimCity 4*. Frus-

Grand Theft Auto III, courtesy Rockstar Games

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

One journalist has concluded that games are "rewiring our minds." If so, they just might be pushing us toward individualism, encouraging us to resist both authors and authoritarians.

trated by the failure of that game's artificial intelligence to demolish old buildings while he dealt with, among other things, "money-sucking parks and amenities, and ever-more-expensive garbage disposal," Jakub Wojnarowicz asks, "where's the private initiative in the city?"

Georgia State's Ted Friedman has observed that making sense of games' inner workings is central to playing them successfully. In the process, players inevitably notice breaches of realism. Is it too easy to earn first downs in *NFL Fever 2003*? Why can an archer's arrow destroy a cruise missile in *Civilization III*? Politically suggestive material will get no free pass. If game characters fail to react to markets or to Sim bureaucrats in a believable fashion, players will step back from the fantasy. Friedman insists that all games are "ideological constructions," implying that they are equal in this respect. But some simulations imitate real people and economies more closely than others, just as some physics models produce more authentic collisions.

"Challenge Everything!"

Realism is delivered in part by means of reductionism—that is, lower-level rules governing game events. Games that allow characters to pick up and carry any small object, or to push large, freestanding ones, are using reductionism. They are thereby becoming laboratories of emergent dynamics. Not only do such games enable experimentation; they reward it with interesting, unscripted behavior. Low-level political simulation methods, such as individual-based models and tracking of supply and demand, extend this new experimentalism into social dynamics. Electronic Arts' commercials whisper conspiratorially, "Challenge everything!" And players just might. Freed from service to narrative and empowered by low-level rules, they can dispassionately test political assumptions without consequences. Their simulated civic tinkering will prompt no real nation to topple, no real person to suffer.

Then there's the extended gaming community, which endlessly critiques, modifies, and debates the limits of games. It equips this accidental laboratory. Its Web sites dissect and disseminate game mechanics. Its members demand the power to customize game software. "Level editors," used to create game maps and content, are now standard game features. But gamers did not wait for slick interfaces before diving into do-it-yourself development. The history of user-modified games—"mods" and their more ambitious cousins, "total conversions"—demonstrates the lengths to which technically facile fans will go to extend favored titles. These modes of customization reinforce games' experimental potential by opening game architecture itself to players.

Comics theoretician Scott McCloud has asked if gaming can "'rewire' us in some way," and journalist Steven Poole has concluded that games are "rewiring our minds." If so, they just might be pushing us toward individualism, encouraging us to resist both authors and authoritarians. Stories do fulfill a distinct need, and computer games are unlikely to break completely from them. For those so inclined, it will always be possible to glue a dramatic collectivist veneer over a rigged simulation. But like Stallabras' chrome, this facade warrants little worry. It may take some ingenuity, but free minds eventually break through fake dungeon walls to explore their potential and live their own stories. ▮

Kevin Parker (scapist@austin.rr.com) works in the semiconductor industry in Austin, Texas.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Emotional Choices

What story you choose to believe about antidepressants reveals a deeper truth about who you are.

Joli Jensen

IN MODERN LIFE, we each get to choose how to act and whom to be. This freedom can also be a curse, because we must make our choices based on approaches to doing and being that may be persuasive but are often in conflict. Our choices are centered on the stories we tell ourselves and the stories we are told; our challenge is to find good ways to choose among contradictory stories.

Such decisions are among the most basic challenges we face, because they become the foundation for a succession of other choices we make throughout our lives, often with no clearly right answers yet with long-term consequences. When we want to make the "right" decision about education, child rearing, or medicine, we must first sort out conflicting claims about what is true.

But while modern life offers us an abundance of compelling stories about what is best for us to do, it offers little guidance for finding our way through a thicket of equally plausible but often mutually contradictory points of view.

There are as many compelling illustrations of this issue as there are choices to make. The example I will use centers on a personal medical decision, but it involves far broader issues: social norms, approaches to choice, even identity. It is about mood medication.

Mother's Little Helper

I'm a prime candidate for such medication—female, entering menopause, with a full-time job and two active children. I've long been prone to bouts of sadness and lethargy. I usually answer yes to most of the depression screening questions found in women's magazines and drug company pamphlets. On top of my symptoms of depression, I have lots of anxiety; I'm definitely a worrywart, imagining disasters of many kinds befalling me, my loved ones, and the world.

Plenty of experts have tried to convince me that I need mood medication. In the last 10 years my primary care physician, my gynecologist, and even my allergist's assistant have offered to get me prescriptions. I'm also being targeted by pharmaceutical companies with magazine and TV ads that describe me exactly and tell me that I can greet the dawn with gusto, romp with my children, smile at myself in the mirror, and be productive, cheerful, and optimistic ("like myself again") if I take their drugs. Why am I resisting taking mood medications, an option that millions of my fellow citizens have already chosen?

One reason I'm hesitant to take Prozac, Zoloft, Xanax, Celexa, Wellbutrin, or their like involves a related but complicating issue: alcoholism. Years ago, I quit drinking because I believed I was an alcoholic, and if this is true it makes taking even doctor-prescribed drugs problematic. When I was first struggling to control my alcohol use, I strongly resisted the *alcoholic* label. But my resistance was interpreted by a counselor as denial, which is a key element in the diagnosis of alcoholism. And as with those depression screening questions, I could answer yes to well over the minimum number of questions required for an official diagnosis of alcoholism.

Woman and doors, ©Photonica

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

LICENSED TO IMZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Since even with my best efforts I was unable to control my drinking, I finally adopted the language and beliefs—what we in academic life call the *discourse*—of alcoholism recovery, including the conviction that the only way to control my addiction was to abstain completely from alcohol and other mood-altering substances. I've successfully abstained from these, one day at a time, for more than 20 years.

Many in 12-step recovery circles believe that mood medication—20 years ago it was Librium, Valium, and tricyclic antidepressants—is just alcohol in pill form. In the 1980s, lots of recovering alcoholics (more women than men) considered themselves dual addicts because they both drank and took pills. Recovering addicts were therefore considered to be one drink or drug away from active addiction. So if these beliefs are true, antidepressants are (for me, if I am indeed an addict) not useful medicine but dangerous drugs. Even everyday medicine—cough syrup, pain pills—could lead me back into active addiction, at least according to some members of the 12-step recovery community. So perhaps I am right to be especially wary.

Yet today many recovering alcoholics make exceptions for doctor-prescribed medications. Even as they consider themselves recovering alcoholics, they are taking and feeling better on mood medication such as Prozac and stimulants such as Ritalin (taken for "adult attention deficit disorder"). These people believe they are treating medical conditions, not feeding their addiction. They believe prescription medication, taken when recommended by a doctor to treat a real illness, is not dangerous and does not lead to relapse.

Are they right? Previous generations of doctors happily prescribed the tranquilizers and pep pills—the Mother's Little Helpers—that brought many women into what they defined as active addiction. In my early sobriety, I heard harrowing tales of how hard it was for these women to learn to live without the pills that their doctors had prescribed for the same kinds of symptoms I struggle with today. And it turns out that today's new and improved mood medications are also difficult to quit, requiring a gradual weaning process much like other addictive drugs. How are Paxil, Zoloft, and Xanax any different from Miltown, Librium, and Valium, the pills many critics now denounce as addictive drugs used to keep women of the '50s and '60s passive and complacent?

Coming Down Again

If you believe the media coverage of the 1990s, the newer selective serotonin reuptake inhibitors (SSRIs) are unlike the drugs of the past because these new medications treat a chemical imbalance that causes the diseases of depression and anxiety. Many who take these medications believe they are correcting a brain chemical deficit. But this is a marketing model that misrepresents what neuroscientists currently know about brain chemistry and the reasons these drugs may work. On top of that, depression, anxiety, and even alcoholism aren't diseases like cancer or diabetes, even if it may be helpful to think of them this way.

There is plenty of controversy about whether alcoholism even exists or, if it does, if it really is a disease. The original use of the term *disease* in Alcoholics Anonymous was metaphorical, aimed at destigmatizing the condition and describing its relentless course if untreated. But alcoholism, along with anxiety and depression, has come to count as a disease in the diagnostic manuals used by psychotherapists and physicians. This means that, at least for prescription and insurance purposes, they *are* diseases. Yet this pathologizing of elements of human experience begs the question: What makes heavy drug or alcohol use, long-term sadness, or heightened anxiety a disease?

And what constitutes addiction? Most of us are dependent on something, and in the last few decades people have learned to define themselves as gambling addicts, sex

> Magazine and TV ads that describe me exactly tell me that I can greet the dawn with gusto, romp with my children, smile at myself in the mirror, and be productive, cheerful, and optimistic if I take their drugs.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

addicts, food addicts, exercise addicts, television addicts, and so on. For all the claims about how "nonaddictive" current mood medications are, the mounting evidence suggests otherwise, since most long-term users feel dependent on them and cannot easily stop using them. And although the American Psychiatric Association says withdrawal effects like those experienced by people who abruptly stop using SSRIs are neither necessary nor sufficient for a diagnosis of "substance dependence," such symptoms traditionally were seen as the hallmarks of addiction.

Furthermore, for all my commitment to continued sobriety, I'm far from "drug free" today if you count caffeine, as we should, as a mood-altering substance. I carry a Thermos of strong tea with me every day, carefully doling out my cups to avoid getting a pounding headache. How is this different from carrying a small flask of medicinal whiskey? Aren't caffeine and nicotine as addictive (if addiction exists) as alcohol and heroin, if not more so?

So are popular products like Prozac, Paxil, Zoloft, Xanax, and Celexa best understood as drugs that change us or as medicines that cure us? What makes them one or the other, beyond social convention and a doctor's prescription?

There's another twist. I have spent most of my life learning how to cope with my moods. I'm deeply invested in figuring out how to glean something useful from my depressions as well as learning how to manage and make the most of my periods of elation. I have found ways to minimize the damage and disruption that my periods of gloom and nameless grief can cause. My moodiness is—and has always been—my "self." Perhaps there's some benefit to living with, rather than medicating, my temperament. I've certainly learned a lot about the range of ways reality can feel. What does it mean for me to start defining myself as "mood-disordered" or "chemically imbalanced" or "borderline personality disordered" or "ADHD"?

By whose story should I live? Am I simply an especially emotionally responsive person, or have I squandered most of my life trying to compensate for biological dysfunctions that modern medicine now allows me to correct?

When it comes to deciding if I should medicate my moods, I am, as we say in my academic field, situated at the intersection of conflicting discourses. But this is true for all of us, with or without mood swings, possible addictions, or persuasive physicians. The invention and marketing of medications that seem to alleviate symptoms of depression and anxiety make it possible for every one of us to choose to take what some would call drugs and others would call medicine, to become (depending on your point of view) an addict, or your old self, or even a preferable self. We are all faced with this choice, as well as many others. How do we choose well?

Three overlapping but conflicting discourses operate whenever we think about taking pills to influence our emotions—discourses of addiction, of neuroscience, and of mental health. Each of these has its own opposition, a discourse that challenges all its premises. If I want to choose wisely about taking or not taking antidepressants, I have to find my way not only through each of these three discourses, each with different evidence and assumptions, but through three additional discourses—the ones that challenge that evidence and those assumptions.

This is a daunting project, but I think it is fairly typical of what modern life asks of each of us. We are always being asked to choose among conflicting stories. The dominant challenge of the modern age is figuring out how to make wise choices.

Might as Well Get Juiced

Most of the stories we are told serve some purpose: to sell a product, support a belief, sustain a social position. The first thing to ask of any contemporary story is the obvious one: Who benefits? In a mass-mediated world, many different self-interested groups are offering us stories we seem to want to hear. In the case of mood medication, the pharmaceutical industry is spending and making stunning amounts of money selling us a story of "chemical imbalances" that their product can safely correct. The recovery community and the mental health industry are both telling us a story of epidemic levels of disorders that require their particular kinds of treatment. And the medical establishment believes it is now better able to "do something" for the many patients who are stressed, anxious, and unhappy.

Those who take mood medication often report that they are now much better able to cope with their stress, anxiety, and unhappiness. They are grateful, even if they are simultaneously uneasy about relying on pills or about various side effects. As Peter Kramer's 1993 bestseller *Listening to Prozac* describes so compellingly, many even celebrate the "new self" that cosmetic psychopharmacology seems to make possible. But even the most fervent celebrators of the possibilities of self-enhancement through medication express ambivalence about going too far with self-transformation. We may have the chemical ability to create and sustain ever more resilient and productive and desirable selves. Should we take that option?

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

If we are surrounded by contradictory stories, whose stories count? Clearly, we have every reason to be skeptical of the stories told to us through advertising. Is this also true of the stories told to us by politicians and journalists? What about the stories told to us by the medical community, grassroots organizations, teachers, religious leaders, scientists, family members, or even those that emerge from our own gut? People with good intentions and no desire to make money from us can still have a vested interest in persuading us to their way of thinking. But how can we know if it is also in our interest?

It's Not Easy

Because it is all too easy to fall for plausible but damaging stories, we need to find ways to figure out which stories to believe. We aren't as good as we think we are at using evidence to make wise decisions. As Michael Shermer points out in *Why People Believe Weird Things* (1997), we fall into logical fallacies and superstitious beliefs with amazing ease. In his analysis of pseudoscientific thinking, Shermer identifies a number of characteristics that bolster faith in our current practices of medicating depression and anxiety.

For example, we are too easily persuaded by anecdotal evidence, by scientific language, and by bold statements, all of which have abounded in media coverage of mood medication. I've reviewed news coverage of mood medication since the early 1990s, and Shermer's caveats describe perfectly their heady mix of personal success stories, accounts of scientific breakthroughs, and hyperbolic language of personal, social, and cultural transformation.

We also succumb to emotive words ("depression is a disease...") and false analogies ("...to be treated like diabetes"). And we tend to over-rely on authorities ("neuroscientists believe..."). We like to split the world in two (well or sick, normal or abnormal, functional or dysfunctional). We eagerly deploy circular reasoning ("I feel better now that I'm taking this medicine, which I'm told is treating a chemical imbalance; therefore my brain is imbalanced and I must need the medication"). Why do we fall for hokum? Shermer believes we are vulnerable to false beliefs because we want certainty, especially in an increasingly complex society.

But sorting out what is best to believe requires some heavy intellectual lifting. It requires discursive analysis, empirical analysis, and ideological evaluation. Armed with these, I can get to what counts most: the consequences of belief.

Having concluded that there are three competing discourses at issue (addiction, neuroscience, mental health), I researched the history of mental illness, drugs and drug use, and addiction treatment and recovery, as well as accounts of how wrong and dangerous the dominant perspective in each of these areas has been. The more I read, the more confusing and contradictory things became.

Were evil drug companies profiting from our need to be efficient emotional machines, brainwashing us into thinking we were mentally ill? Was the mental health industry an elaborate, expensive, debilitating sham? Was the pharmaceutical industry creating a nation of addicts for its own profit? Was the medical establishment just trying to keep patients drugged and tractable?

Or did the dramatic rise in mood medication mean that people have been, or are now, suffering depression in epidemic proportions? If so, are they fortunate to have these ways to avoid succumbing to this devastating scourge? According to this story, these medications are a boon, not a conspiracy. They empower people to recover from debilitating conditions that until now have ruined lives.

The "cosmetic psychopharmacology" perspective goes even further. It suggests that we now have the technology and techniques to match our mood to our circumstances, to become the people we need and want to be. This isn't drug addiction, or treating a debility, but a free choice to use whatever means we have at our disposal to make our lives ever better. Just as we would choose to use antibiotics, vaccines, liposuction, orthodontia, or eyeglasses, we could use mood medication to adjust ourselves to—or triumph over—the demands of today. As Carl Elliott compellingly explains in the recent *Better Than Well: American Medicine Meets the American Dream*, there are multiple "enhancement technologies" people use for self-improvement. These medications are modern means to long-sought ends; why not make the most of them?

Between these two claims—conspiracy and boon—is the seemingly scientific middle ground, offered by newsmagazines, pharmaceutical P.R., and the mental health community, among others. It goes like this: Americans are experiencing an epidemic of depression, now fortunately treatable by a new class of drugs that restores brain chemical balance. The Zoloft ads, with their childish bubbles of serotonin, are the best example of this version of how and why the latest form of mood medication works. According to this story, these drugs aren't perfect (better, more promising ones are on the way), but they are effective and fairly safe. We are not becoming addicts, and we are not using

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

medicine to feel better than normal; we are simply taking medicine to rectify a brain chemical imbalance. As the pamphlets on depression remind us, it's just like taking insulin if you are a diabetic.

Each of these ways of thinking about mood medication draws in various ways on the three deeper discourses. The neuroscientific perspective focuses on how brain chemicals affect mood; the addiction perspective focuses on how drugs are used to cope with life; and the mental health perspective focuses on what are normal or abnormal feelings. So the next step is to sort out the empirical evidence for each of these stories: What do we really know about brain chemicals, addiction, and mental health?

If only empirical evidence were so easy to evaluate. Instead, each of these perspectives generates its own plausible antithesis; this is the dialectic of discourses. Not everyone believes the serotonin story: There are many reputable neuroscientists, such as Elliott Valenstein, author of the 1998 book *Blaming the Brain*, who reject the simple model of chemical deficit that the drug companies use to market their products. Nonetheless, the ads and their critics are both using the discourse of neuroscience: They use the same evidence to support or refute the role of serotonin in mood.

Likewise, the dominant 12-step perspective on addiction and recovery has both proponents and critics. Alcoholics Anonymous and related programs are allied, in complex ways, with a rehabilitation industry that treats alcohol and drug use as a disease that can be put into remission but never cured. Critics point out that these programs rely on techniques of brainwashing and conversion to convince people they are victims of a disease that only the 12-step process can treat. But both proponents and critics of these programs share the discourse of addiction and recovery. They draw on or refute experiential as well as experimental evidence about how to address problematic drug and alcohol use.

Already we are combining discourses: Are antidepressants problematic drugs or deficit-correcting medicines? In order to sort out the addiction discourse, we need to figure out the neuroscience discourse. And that doesn't necessarily help us with the third discourse—on what constitutes mental health.

Emotional Rescue

What is normal mood, anyway? The antidepressant ads suggest that the products they tout help you "feel like yourself again." But who is this "self," and should he or she be the vibrant, active, zest-filled person the ads depict? What makes us so sure that mental health is about feeling good most of the time? There are those who argue convincingly for the value and worth of the darker emotions, who are highly critical of a modern American propensity to make everything sunny.

There are also social critics who argue that it benefits capitalism to keep workers cheerful and productive, and that it benefits patriarchy to keep women chipper and docile. From their perspectives, taking antidepressants prevents the kind of legitimate anger and motivated action that social inequalities require; it makes us all into Stepford employees and partners. But is this argument disrespectful of the genuine suffering these new medications supposedly alleviate? Sorting out what constitutes reasonable and unreasonable emotionality is a highly charged, and often highly personal, endeavor. Whose experiences and beliefs count here? Should we consult the social critics, mental health professionals, our family and friends, or our own preferences?

Your way through this thicket of contradictory, plausible, and interdependent discourses will no doubt be different from mine. All I want to do here is show how I've made my way, trying to evaluate evidence in ways that help me assess the consequences of believing in some stories instead

Social critics argue that taking antidepressants prevents the kind of legitimate anger and motivated action that social inequalities require; it makes us all into Stepford employees and partners.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of others. We can never know for sure if we are making the "right" decision. As Shermer notes, I will probably remember only the evidence and arguments that confirm my choice, and ignore or dismiss the evidence that contradicts it. But at least we each have the opportunity to try to sort things out for ourselves.

So: My own sense of the neurochemical evidence is that the medications so many are taking are far riskier and offer far less benefit that we now realize. So I believe in the "counter-discourse" of neuroscience—that the dominant serotonin story is misleading and potentially dangerous, and that the critique of the dominant story has it mostly right. The model of chemical imbalance sells drugs but doesn't have much to do with how brain chemistry actually functions in mental states. We still know very little about how (or even if) particular brain chemicals connect with particular moods, feelings, or perceptions, and neuroscientists are constantly revising their always-contingent models.

Evidence is accumulating that suggests much of the anecdotal evidence of successful mood alteration may be due to a placebo effect. Some recent controlled studies do not consistently show positive effects from these medications, and other studies suggest that side effects, including suicidal thoughts and actions, are more prevalent than previously publicized. The effects of the medicine on the brain may be structural, long-term, and not very beneficial. To me, that sounds like an unacceptable level of risk.

But maybe I really do have something wrong with my brain, and my heavy drinking in adolescence and early adulthood was my feeble attempt to deal with a condition these new medications could finally treat. Maybe my belief that I'm selling out my sobriety by taking legal drugs is ludicrous. There are certainly compelling critiques of the recovery industry and 12-step programs (by, among others, **reason** contributors Thomas Szasz and Stanton Peele) that would suggest I have been propagandized and brainwashed. Critics of A.A. and related programs rightly note the ideological rigidity, lack of empirical evidence, cult-like qualities, hypocrisy, illogic, and cliché-ridden aspects of what has been called "the recovery movement." Have I fallen for an ideology that means I "keep coming back" for lies?

I am also plenty skeptical of the late-20th-century boom in insurance-funded rehabilitation institutions, and I am very much opposed to requiring those arrested for drunk driving to attend A.A. meetings or go into treatment if they want to avoid jail. I get uneasy around the clichés and psychobabble that flourish in some recovery settings. But I am also impressed by the democratic, self-supporting nature of A.A. and inspired by the sanity and wisdom of the people who sustain it. So in relation to this discourse, I (in the language of recovery) take what I need and leave the rest, and I am grateful to be able to hang around with people committed to recovery discourse. Nonetheless, I don't really believe alcoholism is a disease. Taking one drink or pill might not lead me back into active alcoholism, but it's just not worth the risk to me. So I'm choosing to live by the alcoholism discourse, even as I doubt many elements in it and agree with many elements of the critique of it.

You Can't Always Get What You Want

One of the reasons I can do this is that I find much of the dominant mental health discourse so unconvincing. I used to think that we'd made great strides in treating serious mental illnesses such as schizophrenia, and that we are now making progress with anxiety and depression. Not any more; the history of the treatment of mental illness is an appalling one, up to and including the present day. If you doubt this, read Robert Whitaker's 2002 book *Mad in America: Bad Science, Bad Medicine, and the Enduring Mistreatment of the Mentally Ill*, and learn how the mentally ill have suffered horrible indignities and permanent brain

We make too much of being "normal." Variety and difference are good things. I want people to stop falling for stories about diseases and imbalances that make them eager consumers of possibly dangerous and possibly ineffective drugs.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

damage thanks to mainstream mental health practices. He points out, for example, that the shuffling gait, jerking arm movements, and vacant facial expression we now think of as symptoms of schizophrenia are due, in large part, to dopamine deficiencies caused by current medication, not the condition itself.

I've also read the academic literature on how the treatment of mental illness is actually a form of social control for deviant or disruptive behavior. I find these accounts convincing, especially in relation to women. The history of the treatment of women's depression shows how historically familiar the current reliance on medication is. Women have long been silenced and dismissed through labeling. When people seek to explain the alleged "epidemic" of depression, they don't look to the possibility of social causes and therefore the need for social changes, but instead focus on controlling and medicating the people who display disruptive symptoms.

Critics of modernity, from the Frankfurt School to the post-structuralists, point out that we can be convinced to become willing participants in our own oppression. They argue that capitalism, patriarchy, and modernity convince us to become what these systems need us to be. Even though I'm less worried about these systems than they are, I think there is at least some value in constant skepticism about the importance of being "normal" if "normal" means being docile and tractable.

In fact, I've long been drawn to the grouchy and the eccentric. There is something enlivening about being a crank, and something scary about how easily difference is labeled pathology these days. The relentless emphasis on "adjustment" that sociologists criticized in the 1950s is now so commonplace as to be almost invisible. But what's so great about being adjusted to systems I don't always believe in or support?

So here's where I end up: Mood medication is too risky for me to take or want to give to my kids, although I'm happy to let other people take whatever legal or illegal drugs they want as long as they realize what they are doing. I don't want my friends, family, or fellow citizens to get sucked into believing they are treating a chemical imbalance with medicine when what they are actually doing is taking drugs to feel better.

I think we make too much of being "normal." Variety and difference are good things. I want people to stop falling for stories about diseases and imbalances that make them eager consumers of expensive, possibly dangerous, and possibly ineffective drugs. Taking drugs to feel better may be just fine for you, but I am betting that the option is particularly dangerous for me. So far, living without most drugs (I'm keeping the caffeine) has worked out pretty well.

You Can Make It If You Try

If Shermer is right, I am most vulnerable to being duped when I believe that I've got it all figured out. The ideologically rigid are the easiest to fool. So in order to make wise decisions, I must do my best to stay open to alternative discourses, to what in scientific inquiry is called disconfirmation, while recognizing that my best bet is to put all easy answers to the test.

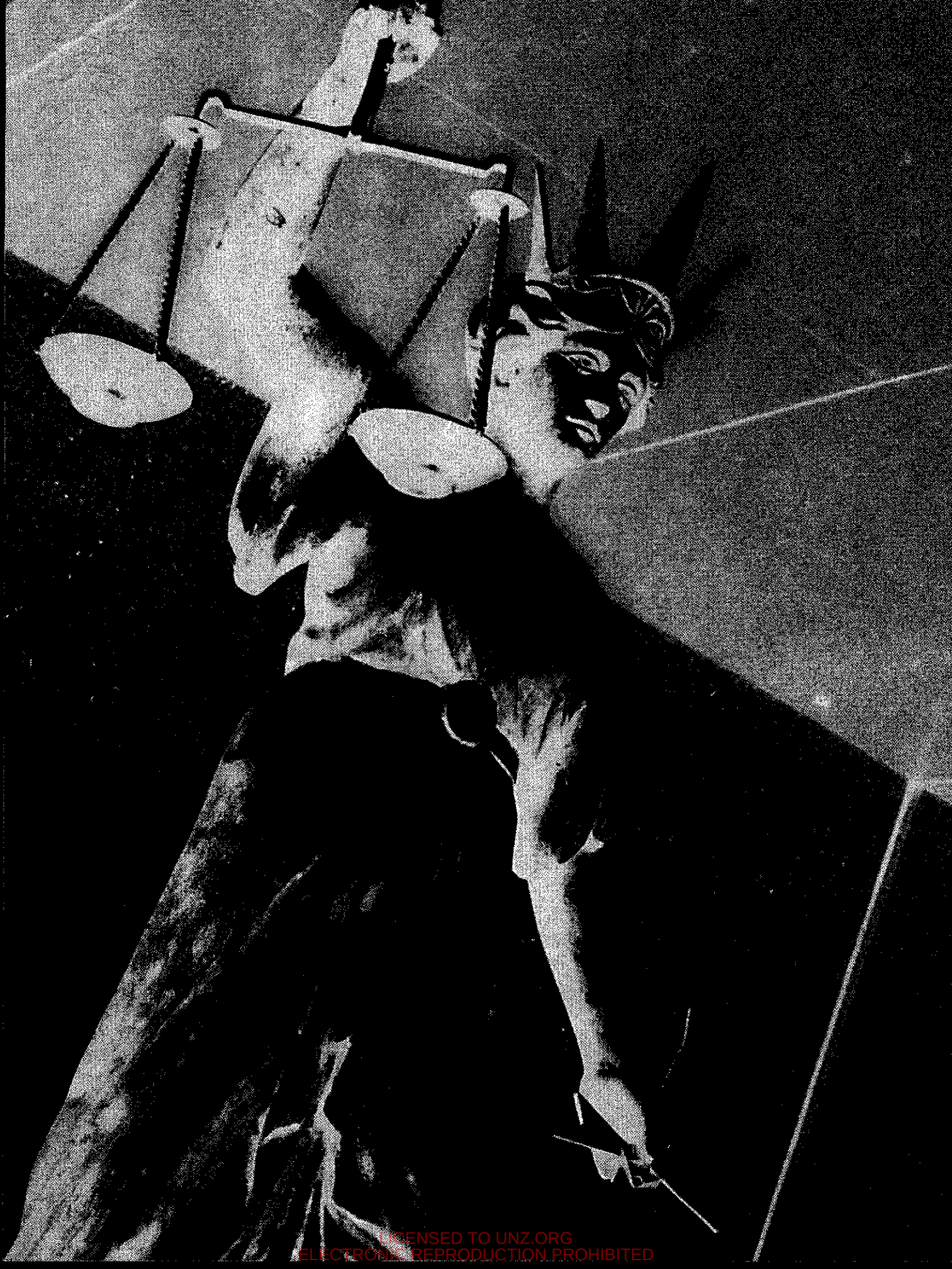
Because, at least for me, the easiest answers are the riskiest ones. For now I'll stick with my challenging but familiar anxiety, buoyed by knowing that in previous times and other cultures, worry and melancholy were valued differently. I'll accept that my perspective is not currently the dominant one, and that I may have to turn to historical or marginal or even discredited discourses for support. I'll ally myself with the difficult and eccentric over the easy and productive. I'll remain wary of the long-term effects of drugs that are invented and marketed to treat conditions that I think are just convenient and self-interested renamings of the human condition.

I'll also keep using some of the language of addiction, even though I don't believe alcoholism is really a disease. I'll use it because I gain direct benefit from following the metaphor, and because it gives me a way to make sense of how much different and better my life is now that I neither drink nor use drugs. I also choose to continue with the discourse of addiction, in spite of the compelling arguments about its limits and fallibility, because it allies me with people who are living in ways I value.

In this way, then, I am making the most of what modern life does so well: democratizing knowledge. More and more of us have access to multiple, contradictory ways of defining the world. We have more freedom to choose our beliefs than anyone has ever had before, but this increasing freedom comes without guarantees. We must realize that truth does not automatically emerge in a free marketplace of ideas. In today's mediated and self-interested marketplace of discourses, we each need to sort out our truths with diligence, skepticism, and persistence.

Joli Jensen (joli-jensen@utulsa.edu), a professor of communication at the University of Tulsa, is the author, most recently, of Is Art Good for Us? Beliefs About High Culture in American Life (Rowman & Littlefield).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Washington's Biggest Crime Problem

The federal government's ever-expanding criminal code is an affront to justice and the Constitution.

William L. Anderson and Candice E. Jackson

MICHAEL PAUL MAHONEY was convicted of selling methamphetamine in 1980 and served 22 months in a Texas prison. Upon his release, he went straight, opening a pool hall in Jackson, Tennessee. After closing up each night, he would deposit the day's receipts at the bank, carrying a small .22-caliber pistol for protection.

In 1992, after the pistol was stolen, Mahoney bought a new one at a pawnshop, filling out the required paperwork. After the Bureau of Alcohol, Tobacco, and Firearms investigated the purchase, the U.S. Attorney's Office in western Tennessee charged him with violating a federal law that bars "career criminals" from owning a gun. (He qualified as a career criminal because he had sold methamphetamine to an undercover officer three times.) Although the judge at Mahoney's trial protested that it was pointless to pursue such a case against a now-law-abiding citizen, federal sentencing rules tied his hands. Mahoney, who was 39 when he was convicted in 1993, received a 15-year sentence. By contrast, people convicted under Tennessee's law prohibiting gun ownership by felons (which did not apply to Mahoney, since his drug conviction was more than 10 years old) can receive sentences of less than a year.

In 2000 Memphis business owner Logan Young, who had been a close friend of the legendary University of Alabama football coach Paul "Bear" Bryant, was accused of paying some $150,000 to two Memphis high school coaches in an attempt to steer a prize recruit to Alabama.

Themis, goddess of justice, ©Stefan Mokrzecki/SuperStock

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The National Collegiate Athletic Association investigated the charges and placed Alabama's football team on probation for two years. Young arguably could have been charged with violating a Tennessee law that forbids bribes to "public servants," a crime that carries a penalty of three to six years in prison. But then prosecutors would have had to prove that he actually bribed the coaches, a charge he hotly denies.

Instead he was indicted last fall on three federal charges derived from the alleged bribery: conspiring with the coaches; aiding and abetting travel across state lines "with the intent to further unlawful activity"; and trying to conceal the alleged payments by withdrawing the money in amounts of less than $10,000, the threshold for a currency transaction report to the Internal Revenue Service. Each count carries a five-year prison term.

In 1996 Edward Hanousek Jr., a road master for a railroad company running between Alaska and Canada, was convicted of negligently discharging a harmful quantity of oil into the Skagway River, a U.S. waterway, in violation of the Clean Water Act. An independent contractor had accidentally ruptured a pipeline while attempting to clear rocks off the tracks. Hanousek was off duty and at home that day, nowhere near the accident site, and he had no knowledge of the pipeline rupture until after the fact. The government nevertheless prosecuted Hanousek, a federal jury convicted him, and he received a sentence of six months in prison, six months in a halfway house, six months of post-release supervision, and a $5,000 fine.

These are just three of the many cases that illustrate how federal criminal law has overstepped its proper bounds, prescribing draconian punishments for offenses that should be handled at the state level or that should not be considered crimes at all. During the last century, especially in the last three decades and in the aftermath of the September 11 attacks, Congress has made federal crimes out of an astonishing array of behavior, much of which is already prohibited by state law, could be better addressed with civil penalties, or is considered wrongful not because it violates anyone's rights but only because Congress says so.

When Congress creates a federal penalty for actions traditionally prosecuted at the state level, it violates the core constitutional principle of federalism, which prohibits Congress from legislating on local matters. Such laws also burden the federal court system, promote selective prosecutions, and stack the deck against defendants. In addition to duplicating state law, Congress has created derivative offenses, such as racketeering and mail fraud, an approach that makes convictions easier to obtain because the offense consists mainly of otherwise innocuous behavior. In Logan Young's case, for example, the government does not have to prove bribery. For two of the counts against him, all it has to prove is that he crossed state lines and withdrew money from his bank account in pursuit of his alleged bribery scheme. The actions are not in dispute, and it is relatively easy for a jury to infer criminal intent.

Getting even further from the essence of criminal behavior, many federal laws impose criminal sanctions for so-called public welfare offenses. These laws often do not require a "guilty mind," or *mens rea*, which historically has been an essential element in common law crimes. Indeed, public welfare "crimes," such as violations of environmental regulations or insider trading laws, need not involve even unintentional harm to third parties. The overreaching of federal criminal law is especially troubling because institutional and procedural features of the federal system invite prosecutorial abuses, make convictions easier to obtain than in state systems, impose harsh mandatory sentences even for nonviolent acts, and result in disparate treatment of similarly situated defendants.

Uncountable Crimes

The trend toward federalization of crime (and criminalization of everything) has prominent critics. In 1998 Chief Justice William H. Rehnquist warned: "The number of cases brought to the federal courts is one of the most serious problems facing them today....Over the last decade, Congress has contributed significantly to the rising caseload by continuing to federalize crimes already covered by state laws....The trend to federalize crimes that traditionally have been handled in state courts not only is taxing the judiciary's resources and affecting its budget needs, but it also threatens to change entirely the nature of our federal system." Supreme Court Justices David Souter and Anthony Kennedy also have cautioned Congress against turning the federal courts into general police courts.

In an October 2003 column published on Townhall.com, Rebecca Hagelin, vice president of the Heritage Foundation, noted: "America started out with three federal laws—treason, counterfeiting and piracy. In 1998, the American Bar Association counted more than 3,300 separate federal criminal offenses on the books—more than 40 percent of which had been enacted in just the past 30 years. These new laws cover more than 50 titles of the U.S. Code and encompass more than 27,000 pages. Today, the Congressional Research Service says it no longer can even say how many federal crimes exist." She continued: "Are we that much more evil

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

than we were 200 years ago that we need this many laws to keep us off of each other? Or has the nanny state veered completely out of control—creating crimes where no evil existed, pinning blame where no harm was intended?"

The first significant expansion of the federal criminal code occurred in the late 19th century, when Congress established penalties for "misuse" of the U.S. mail system and passed antitrust laws. By 1915 there were about 3,000 federal prisoners, serving time for crimes such as treason, espionage, mail fraud, antitrust and banking offenses, and violations of the newly enacted Mann Act, which made it a crime to transport a woman across state lines for "immoral" purposes. More than two-fifths of federal criminal statutes were enacted after 1970, when Congress and the White House took on organized crime, drugs, pollution, and other politically charged targets. In 1981, when Ronald Reagan took office, there were about 20,000 federal prisoners, a figure that rose to 53,000 by 1989. The number has more than tripled since then, to about 171,000. The number of federal prosecutors also has shot up, from about 1,500 in 1981 to more than 7,000 today.

Members of Congress do not hesitate to enact criminal laws addressing whatever the public concern of the day happens to be, whether or not the Constitution gives them the authority to do so.

Although the federal prison population has increased dramatically, it is still dwarfed by the 1.9 million or so inmates in state prisons. Due to limitations of time and funding, federal criminal prosecutions are highly selective, creating dangerous incentives for federal prosecutors to engage in vendettas against unpopular defendants (such as Michael Milken and Martha Stewart), looking for cases that offer maximum political advantage. The average sentence for nearly every type of crime punishable by both federal and state law is higher under federal law, making it easy for prosecutors to force guilty pleas from people who otherwise might be inclined to fight the charges against them.

Of the approximately 77,000 defendants convicted on federal charges in 2001, 97 percent pleaded guilty or no contest. Out of the more than 121,000 cases opened by U.S. attorneys that year, only 5 percent involved violent crimes such as rape and murder (most of which were connected to other federal crimes). Forty percent of the cases involved "public welfare" offenses such as regulatory and immigration violations, and more than 30 percent involved drug offenses. In 2001 only 10 percent of the people incarcerated in federal prisons had committed violent crimes.

Tough on Crime—And the Constitution

Members of Congress do not hesitate to enact criminal laws addressing whatever the public concern of the day happens to be, whether or not the Constitution gives them the authority to do so. In just three years in the mid-1990s, Congress passed criminal statutes dealing with anti-abortion violence, carjacking, failure to pay child support, animal rights terrorism, domestic violence, telemarketing fraud, computer hacking, and art theft, among many other offenses already covered by state laws.

The sometimes violent anti-abortion protests of the early 1990s gave rise to the Federal Access to Clinic Entrances (FACE) Act of 1994, which makes it a federal crime to interfere with reproductive health services through physical obstruction, vandalism, threats, or violence. The upshot is that someone like Eric Rudolph, arrested last year in North Carolina for a 1999 bombing at a Birmingham abortion clinic that killed a guard and maimed a clinic worker, is not charged in state court with assault and murder. Instead Rudolph faces federal charges that he "did maliciously damage, by means of an explosive, a building and property used in an act affecting interstate and foreign commerce," with resulting death and injury. The reason for viewing his actions this way lies not in the nature of his crime but in the politics of abortion.

The federal carjacking statute is another example of how Congress passes legislation in response to the publicity surrounding particular crimes, even when there is nothing about them that makes federal action appropriate. In an especially vicious carjacking that received national

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

media attention in 1992, a Maryland woman was killed after her arm became tangled in her seat belt and the perpetrator drove off, dragging her behind the car. Although local authorities successfully prosecuted the carjackers, sentencing both the driver and his 17-year-old accomplice to life in prison, Congress felt compelled to pass a law that provides a 15-year minimum sentence for all carjackings involving cars that have moved across state lines at any point. The law, which was passed just a month after the Maryland crime, also mandates a minimum 25-year sentence for any carjacking that results in serious bodily injury and allows the death penalty if anyone is killed.

Federal law criminalizes nearly all robberies and schemes to defraud, many firearms offenses, all loan sharking, most illegal gambling operations, most briberies, every drug deal (regardless of the quantity involved), and many more crimes already addressed by state laws. Federal jurisdiction over essentially local crimes is contrary to the system of government envisioned by the Framers, under which Congress was to have only those powers specifically enumerated in the Constitution. When Congress legislates on matters such as the possession of guns in schools or the cultivation of marijuana in a closet, it makes a mockery of the 10th Amendment, which says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." As Chief Justice Rehnquist notes, "Federal courts were not created to adjudicate local crimes, no matter how sensational or heinous the crimes may be."

As a result of congressional overreaching, federal courts face overwhelming caseloads. Because of the Speedy Trial Act, which limits the time between arrest and trial for federal offenses, criminal cases take precedence over civil cases. That means federal judges must clear tens of thousands of federal drug and firearms cases, for example, before they can turn to civil cases adjudicating federal questions such as civil rights violations by government officials or constitutional challenges to state laws. In 1990, when the Federal Courts Study Committee released a report documenting the "rapid diversion of resources from civil to criminal cases," U.S. District Judge John Gerry told a Harvard Law School Association gathering the congressional obsession with federalizing crime was making civil access to federal courts a "cruel joke." In 1999 Rehnquist warned Congress that federal courts, particularly in border areas, were experiencing "a crisis in workload created by an unmanageable number of immigration and drug-related cases."

Two men were arrested for jointly running a marijuana growing operation in Spokane, Washington. The one prosecuted in state court was fined $1,000. His partner, prosecuted in federal court, got a 10-year sentence.

Double Trouble

Civil litigants are not the only ones who suffer. So do criminal defendants. To begin with, federal penalties generally are much harsher than state penalties for the same offense. Many critics have pointed out that disparate punishment by state and federal jurisdictions for the same crime invites abuse of prosecutorial discretion at both state and federal levels. State prosecutors may use the threat of a federal prosecution as a bargaining tool to wrangle a guilty plea. Federal prosecutors may decide to prosecute only those defendants whose convictions will bring political rewards. Federal prosecutors are free to cherry-pick high-profile or politically expedient cases, knowing that the cases they reject probably will be prosecuted in state court.

In a 1997 article in the *Southern California Law Review*, Cornell law professor Steven D. Clymer describes a case that illustrates the disparity between state and federal prosecutions for the same crime. Two men, Mark Brock Palmer and Jack Roberts, jointly ran a marijuana growing operation in Spokane County, Washington. After their arrest, the federal prosecutor brought charges against Palmer, but not Roberts. Prosecuted in state court, Roberts was sentenced to a fine of $1,000, which was waived because he was indigent. Palmer, meanwhile, was convicted in federal court and sentenced to a 10-year prison term and eight years of supervised release, the most lenient penalty allowed under federal law.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

When Rudolph Giuliani was the U.S. attorney for the Southern District of New York in the 1980s, he implemented an anti-drug policy he called "Federal Day." On a different day each week, all drug offenders arrested and charged that day were prosecuted in federal court. Thus a crack cocaine offender arrested on Monday, say, would face a 10-year mandatory minimum sentence, while a crack offender arrested on Tuesday that same week would face perhaps 18 to 20 months of prison time under state law.

Courts consistently have rejected constitutional challenges by defendants complaining of selective prosecution. The federal prosecutor did not have to explain why he chose to prosecute Palmer but not Roberts for essentially the same conduct. Prosecutors enjoy a legal presumption that they exercise their discretion soundly, making their decisions almost entirely unreviewable. Even if the federal prosecutor had chosen to prosecute Palmer but not Roberts because he personally disliked Palmer, there would be no remedy for that abuse of discretion.

Another problem created by duplication of state criminal laws is the possibility of trying defendants twice for the same offense. The U.S. Supreme Court has held that state and federal prosecutions for the same actions do not violate the Eighth Amendment's prohibition of double jeopardy because they involve two different "sovereigns" (the state and federal governments). Yet the principle underlying the Double Jeopardy Clause is that it's unfair to be punished twice for the same offense or to be prosecuted a second time because the government didn't like the result of the first trial. When Congress criminalizes the same actions that states have criminalized, both kinds of abuses can occur, and they are especially likely in high profile, politically charged cases.

After the riots that followed the 1992 acquittal in state court of the four Los Angeles police officers who were charged with beating Rodney King, the first Bush administration decided to prosecute the men in federal court. What had been state assault charges became federal criminal charges of violating King's civil rights, based on a Reconstruction-era law aimed at thwarting Ku Klux Klan attacks on former slaves. The law provides criminal penalties for violations of civil rights by individuals acting "under color of any law" (such as police officers who use excessive force). Although the federal statute was different from the state law under which the four L.A. police officers originally were charged, the essence of the crime remained the same. If the officers were not guilty of the state offenses, they could not be guilty of the federal offenses either. Yet they were convicted the second time around, and each was sentenced to several years in federal prison.

Public outrage also prompted serial prosecutions in the case of Lemrick Nelson, convicted last spring of fatally stabbing Yankel Rosenbaum during the 1991 anti-Jewish riots in Crown Heights, Brooklyn. Originally tried in state court, Nelson was acquitted in 1992 despite overwhelming evidence of his guilt. Five years later he was tried in federal court, technically not for murder but, as in the Rodney King case, for violating Rosenbaum's civil rights—by stabbing him to death. In addition to actions by public officials, federal civil rights violations can include just about any crime where the victim is chosen "because of his race, color, religion, or national origin." Nelson was charged with attacking Rosenbaum "because of his religion and because he was enjoying facilities provided and administered by a subdivision of the State of New York, namely, the public streets provided and administered by the City of New York."

In other words, federal involvement hinged on the crucial fact that Rosenbaum was *walking down the street* at the time of the attack. This time around Nelson was convicted, but in January 2002 a federal appeals court threw out the conviction on the grounds that the trial judge had biased the outcome by manipulating jury selection. Among other things, the judge invoked the Rodney King case during jury selection to suggest why the case was important—virtually an invitation for jurors to correct the state verdict. In 2003 Nelson was tried a third time, convicted a second time, and sentenced to 10 years in federal prison (almost all of which he had already served).

In both of these cases, the question is not whether the defendants were guilty. It's whether we want a criminal justice system in which a defendant can be tried again for the same offense if he happens to be acquitted—or even if he's found guilty, in which case punishing him twice would be perfectly OK according to the Supreme Court. Whether we want such a system or not, that's what we've got.

Deriving Force

One reason it's impossible to get a definitive count of federal offenses is that many are derivative, defined by other criminal acts. Laws against money laundering, for example, make otherwise innocent transactions criminal if the government believes they were intended to disguise the source of drug money or other ill-gotten gains. Under the USA PATRIOT Act, federal investigators can criminalize many normal financial transactions by alleging even the most tenuous connection to the funding of terrorism or other illegal activity. Federal

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

prosecutors recently used the PATRIOT Act's money laundering provision against Las Vegas officials accused of taking bribes from a strip club owner. And as illustrated by the indictment of University of Alabama booster Logan Young, derivative crime laws can be used to transform a single offense into several, allowing prosecutors to pile on charges in a way that encourages a guilty plea.

Perhaps the most conspicuous example of a derivative crime law is RICO, the Racketeering Influenced and Corrupt Organizations Act. The most commonly used provisions of RICO make it a crime to conduct or participate in, through a pattern of racketeering activity, the affairs of an enterprise affecting interstate commerce, or to conspire to do the same. The statute defines "a pattern of racketeering activity" as two or more instances within 10 years of "any act or threat" involving a laundry list of crimes defined by state laws or other federal laws.

For instance, two acts of mail fraud within 10 years constitute a pattern of racketeering activity under RICO. Thus, anyone associated with a group of people (an "enterprise" under RICO) that allegedly committed mail fraud ("racketeering activity") could be charged with conspiracy to violate RICO, which carries a 20-year prison sentence. People convicted under RICO can also lose their real and personal property to criminal forfeiture. The government can seize a defendant's assets immediately after indicting him, making it virtually impossible to finance an effective defense.

As the definition of RICO offenses makes clear, any truly wrongful acts covered by the law are already criminalized in other statutes. Not only are RICO violations derivative offenses, but so are many of the underlying crimes the law lists, such as mail fraud and money laundering. RICO adds nothing of substance or value to the federal criminal code, except as a weapon in the hands of investigators and prosecutors.

Derivative crime laws are designed to facilitate convictions, not to protect anyone. Consider the derivative crime of mail fraud, which involves using the mails to perpetrate a fraud. Since almost everyone mails letters, it's easy to satisfy part of the definition and make an indictment stick. If the defendant refuses to plead guilty, the government has to produce only the weakest circumstantial evidence to allow a jury to conclude that the defendant's letter was part of a scheme to defraud someone, and the defendant faces up to 20 years in prison—and potentially an *additional* 20 years for a RICO violation.

Most federal criminal laws are derivative because of constitutional constraints on the federal government. For example, Congress has no constitutional authority to make it a crime for one person to defraud another. But it does have the authority to regulate interstate commerce. In 1909, relying on a strained interpretation of that power, Congress passed a law that made it a crime to use the national mail system, even incidentally, to defraud someone.

In the 1916 case *Badders v. United States*, Supreme Court Justice Oliver Wendell Holmes brushed aside the lack of constitutional authority for this statute, upholding a man's conviction on seven counts of mail fraud (one for each letter) and his sentence of five years' imprisonment per count and a $7,000 fine. Writing for the majority, Holmes reasoned that Congress has the power to regulate (and criminalize) use of the mails even though Congress would have no constitutional authority to criminalize the underlying fraud. "Intent may make an otherwise innocent act criminal," wrote Holmes, "if it is a step in a plot." Citing Supreme Court cases upholding similar laws regulating the use of the mails, Holmes concluded, "Whatever the limits to its power, [Congress] may forbid any such acts done in furtherance of a scheme it regards as contrary to public policy, whether it can forbid the scheme or not."

The Supreme Court's reluctance to question the use of the Commerce Clause as a license to pass criminal laws has created a situation in which Congress has virtually plenary authority to criminalize whatever conduct it chooses. In the 1995 case *United States v. Lopez*, the Supreme Court ruled for the first time in 60 years that a federal criminal law exceeded Congress' authority under the Commerce Clause. The law in question, the Gun-Free School Zones Act, made it a federal crime to possess a gun in or near a school. But most lower courts have refused to apply that decision in subsequent cases. If the Supreme Court is serious about restoring federalism by imposing meaningful checks on congressional authority, it will have to speak to the issue again, and more forcefully.

Accidental Criminals

In addition to the question of whether Congress has authority to legislate in a given area, there is the issue of whether criminal penalties are appropriate. Consider the case of Christian Hansen and his son Randall, owners and operators of the Georgia-based LCP Chemicals and Plastics. In 2001 the Hansens were convicted of more than 30 environmental violations, including offenses under the Clean Water Act, the Resource Conservation and Recovery Act, the Endangered Species Act, and the Comprehensive Environmental Recovery and Compensation Liability Act. The elder

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Hansen was sentenced to 10 years in prison, while his son was sentenced to four years. Even though only one employee testified to slipping in contaminated wastewater (but reported no resulting injury), the Hansens were convicted of endangering the health and safety of employees, among many other charges.

Perhaps the most disturbing feature of prosecutions like this one is that federal regulatory statutes such as the Clean Water Act and Endangered Species Act impose criminal liability on the basis of negligence and do not require any culpable intent by the accused. The Supreme Court has determined that certain "public welfare" offenses can trigger criminal sanctions without a showing of criminal intent, recklessness, or even knowledge of the violation. Thus, Congress can impose harsh criminal penalties on business owners and supervisors who have no knowledge of or control over regulatory violations that may occur at their firms.

Under "public welfare" laws, Congress can impose harsh criminal penalties on business owners and supervisors who have no knowledge of or control over regulatory violations that may occur at their firms.

Environmental regulations, antitrust laws, securities regulations, and a host of other federal laws aimed at nonviolent, nonpredatory behavior the government wants to discourage illustrate how far we have moved from the traditional view of crime as deliberate wrongdoing. Only intentional crimes against people or their property should be subject to criminal penalties. If the Hansens' environmental violations merited sanctions, they should have been civil, not criminal. And if Edward Hanousek, the railroad supervisor mentioned at the beginning of this article, was negligent in overseeing the independent contractor who accidentally spilled oil into a river, whatever harm resulted should have been addressed in a civil proceeding, requiring payment for cleanup or restoration of the waterway.

In recent decades prosecutors increasingly have pursued criminal sanctions against people for behavior that in the past would not have drawn even a fine, much less a prison term. Rudolph Giuliani prosecuted financier Michael Milken for what his own staff called "technical violations" of securities regulations. James Comey, Giuliani's successor as U.S. attorney for the Southern District of New York, charged Martha Stewart, former president of Martha Stewart Living Omnimedia, with "securities fraud" for publicly declaring herself not guilty of a crime the government has not proved she committed. (See "St. Martha," October.) Federal prosecutors receive political benefits not for hard-nosed prosecution of real crimes but for creatively charging high-profile targets. Instead of being reviled for his malicious prosecution of Stewart, Comey recently was promoted to deputy U.S. attorney general, the second-highest post at the Justice Department.

Federal Court Advantage

Once a prosecutor picks his target, he can rely on many features of the federal system that facilitate convictions. In a delightfully (and disturbingly) frank article in the April 1995 issue of the *Hastings Law Journal*, University of Virginia law professor John C. Jeffries Jr. and U.S. District Court Judge John Gleeson argue that "federal prosecutors can conduct organized crime investigations more quickly, bring more charges, and win more convictions than state and local authorities" due to "features of federal law [that] combine to give federal prosecutors enormous advantages over their state and local counterparts."

In federal court, for example, a defendant can be convicted solely on the basis of uncorroborated testimony by an accomplice (called "statements of interest"), which is something that many states, including New York and California, do not permit. The rationale for such state rules is that an accomplice has little incentive to testify truthfully, especially if he can cut a deal by fingering someone else.

Jeffries and Gleeson also note that a federal grand jury can be called "any time a prosecutor chooses," even without a formal allegation of a crime. "An anonymous tip or rumor may suffice," they write, and an investigation "may be commenced simply to provide assurance that the law has not been violated." A federal grand jury possesses nationwide subpoena power, can hear evidence that would be inad-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

missible at trial, and can return an indictment based entirely on hearsay. "In these and other respects," Jeffries and Gleeson write, "federal grand jury practice is stacked in favor of the prosecution."

Federal sentencing guidelines compel federal judges to give longer sentences than they otherwise might, allowing "downward departures" only in narrowly defined circumstances. "The Sentencing Guidelines empower prosecutors," Jeffries and Gleeson write. "Indeed, if federal prosecutors had been asked to create the sentencing regime that would place the maximum permissible pressure on criminal defendants to cooperate with the government, they could hardly have done better than the Sentencing Commission." Under the guidelines, cooperating with the government is usually the only way for a defendant to substantially reduce his sentence, so "the prosecution holds the key to the jailhouse door."

Under the federal sentencing guidelines, cooperating with the government is usually the only way for a defendant to substantially reduce his sentence, so "the prosecution holds the key to the jailhouse door."

Although Jeffries and Gleeson focus on organized crime, they note that federal prosecutors can use their advantages in all sorts of cases. "The limits set by the substantive law are so relaxed as to be almost irrelevant," they write. "If, for example, federal prosecutors wanted to stamp out late-night robberies of convenience stores, they would have the authority to try. That such crimes remain the province of state law is not a matter of legislative coercion but of prosecutorial choice."

All three branches of the federal government bear responsibility for allowing prosecutors to wield such sweeping powers. Congress treats criminal statutes as symbolic statements rather than legislation that needs to be justified on constitutional and policy grounds. In their eagerness to condemn the villains of the moment—polluters, drug dealers, insider traders—legislators pay little attention to whether the punishment fits the crime or even to whether the behavior they're targeting is properly considered a crime. The executive branch lobbies for new laws and imposes few limits on prosecutorial discretion. Perhaps most disappointingly, the Supreme Court has complacently approved the steady erosion of due process rights, constitutional restrictions on punishment, and state autonomy.

The Court is not likely to revisit the distinction between civil and criminal penalties or impose new limits on punishment under the Eighth Amendment. But it has shown an interest in reviving federalism, and the best hope for shrinking the domain of federal criminal law may be for the Court to follow up on its decision in *Lopez* with a more forceful statement of the need to distinguish between local and national crimes. Although lower courts have not done much with *Lopez*, there have been a few promising decisions.

Last year, for example, the U.S. Court of Appeals for the 9th Circuit overturned two convictions—one for possession of child pornography, the other for possession of homemade machine guns—on the grounds that the offenses were too remote from interstate commerce to justify federal prosecution. For similar reasons, it also ruled that the Controlled Substances Act "is likely unconstitutional" as applied to medical marijuana users. We can expect to see more such cases if the Supreme Court issues a ruling that establishes clearer limits to congressional authority under the Commerce Clause. But that would mean revisiting decisions on which the legitimacy of the federal government's expansion since the New Deal depends.

In *Lopez* the Court, quoting an earlier case, worried that an overbroad reading of federal powers threatens to "obliterate the distinction between what is national and what is local and create a completely centralized government." Reversing that process may require bolder action than the Court is willing to take. ▮

William L. Anderson (banderson@frostburg.edu) is an assistant professor of economics at Frostburg State University in Frostburg, Maryland. Candice E. Jackson (erinjack@aol.com) is an attorney with Judicial Watch in San Marino, California.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Building the Perfect Candidate

Tim Cavanaugh and Nick Gillespie

As devotees of free minds and free markets, we spend our nights pining for a major-party politician who not only looks dreamy while reading a Teleprompter but shows some passion for life, liberty, and the pursuit of happiness *and* sex, drugs, and rock 'n' roll.

President George W. Bush's determination to be all things to all people has ballooned the national debt and created an America where the worst aspects of the moralizing right, the caring left, and Wilsonian do-gooders have become national policy. To top things off, his FDA has even banned the very ephedra that might have made it possible to stay awake during Campaign 2004.

But if Bush's many failings are self-evident to libertarians, it's equally clear that the Democratic alternative (almost certainly to be John Kerry as of this writing), will in no way be worth endorsing either. The only way we're going to meet Candidate Right is to make our own—and that's just what we intend to do.

In the spirit of the do-it-yourself culture and biotechnological innovation that we celebrate regularly in these pages, we've taken the liberty of building the perfect Bush challenger from the personality traits and disparate policies offered by the various Democratic office-seekers who at one point or another have thrown their hats into the ring. ■

Tim Cavanaugh (tcavanaugh@reason.com) is reason*'s Web editor. Nick Gillespie (gillespie@reason.com) is* reason*'s editor-in-chief.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

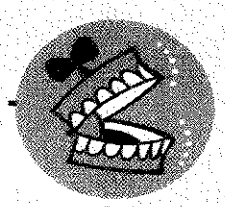
reason's Dream Candidate

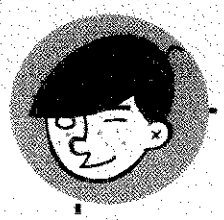
We've surveyed the field of presidential challengers, and only in our dreams do we see our Candidate Right. Mr. Sandman, send us someone with:

The Silver Tongue of Al Sharpton. Policies and politics aside, Rev. Al is the only candidate we can listen to for 10 minutes without falling asleep. With his bluntness and his phrase-turning acumen, presidential press conferences would become the ultimate must-see reality TV series.

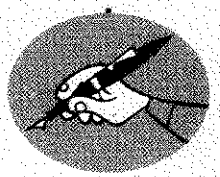
The Eyebrows of Richard Gephardt. His bushy, golden tufts signify the tenacity and determination that kept the Show Me State representative extraordinaire running for president several decades past his sell-by date.

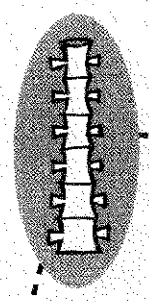
The Hair of John Edwards. No one fills out an empty suit quite like the forever-young, ultra-coiffed senator from North Carolina. Although we deplore the popular image of Edwards as "Bill Clinton without the baggage" (duh, the baggage was the best part!), America's favorite working-class stiff cum multimillionaire is the cute Beatle in Campaign '04.



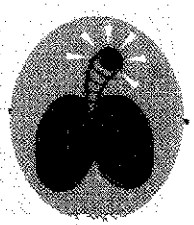


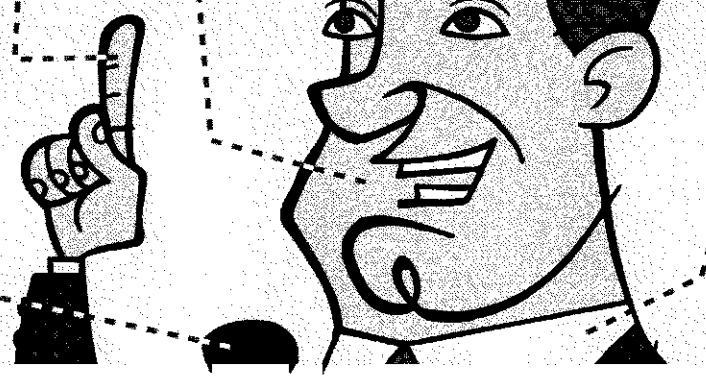
The Writing Hand of Bob Graham. The already forgotten senator from Florida reportedly has spent countless hours of his political career keeping a Pepys-like diary that detailed his every meal, meeting, and belch. Unlike the current occupant of the White House, Graham would leave a paper trail wide enough to keep special prosecutors and historians alike busy for years to come.





The Backbone of Joe Lieberman. Although it's never been clear that he has even his own wife's vote, Connecticut's "Vinegar Joe" consistently stands up for free trade and the benefits it brings to American and foreign workers. That he does so as his own party repudiates NAFTA with increasing ferocity shows us something.





The Heart of John Kerry. In the best spirit of cultural noblesse oblige, this Boston Brahmin supported gay and lesbian rights long before it was cool (not that it's exactly cool now). What's more, in 1996 he momentarily floated the visionary notion of scrapping the Departments of Agriculture and Energy and merging Labor and Education into a single smaller, albeit still useless, department.

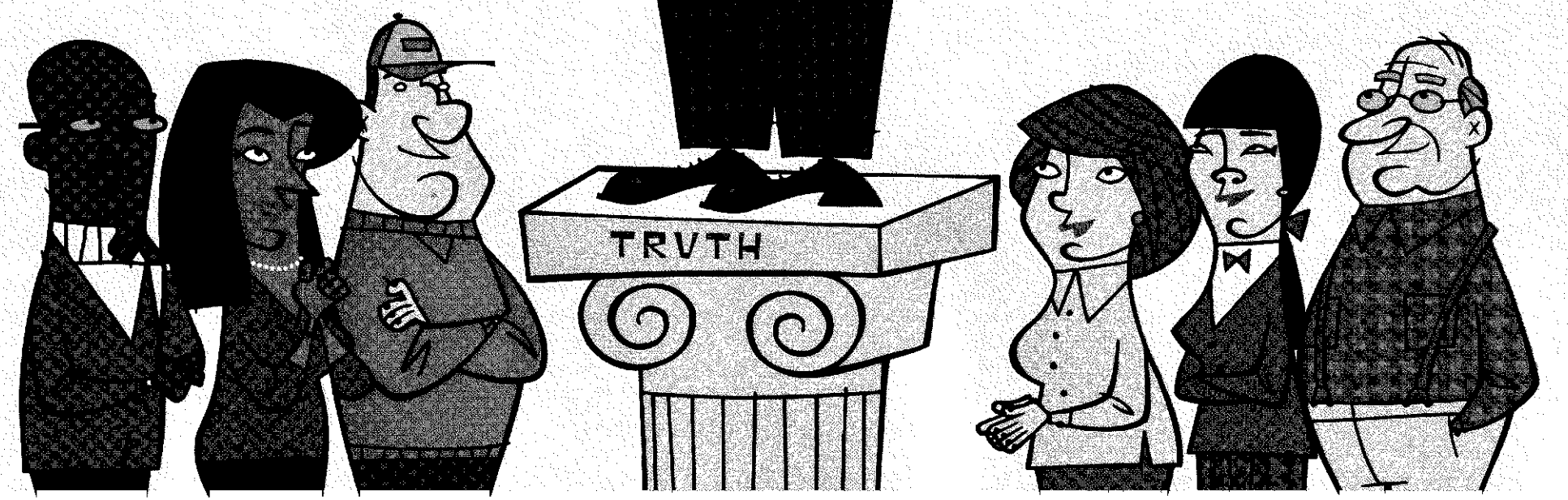
LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Lungs of Howard Dean. Various loud-mouthed rantings make it clear that the brash-talking former Vermont governor can be an unstable bully, but he made us swoon there for a moment when he first burst on the national scene as "fiscally conservative and socially liberal." Would that it were true.

The Barrel Chest of Wesley Clark. The cashiered NATO commander's ability to score casualty-free victories against people America shouldn't have been fighting in the first place is more important in today's world than ever before.

The Guts of Carol Moseley-Braun. The former ambassador to New Zealand not only managed to keep on keeping on following the humiliation of losing a guaranteed-for-life Senate seat after one scandal-plagued term, she's actually openly critical of the pointless and destructive War on Drugs.

The Spleen of Dennis Kucinich. The former boy wonder mayor of Cleveland pledged to repeal the USA PATRIOT Act in its entirety.



Illustrated by Terry Colon

ELECTRONIC REPRODUCTION PROHIBITED LICENSED TO UNZ.ORG

The Dud We'll Actually Get

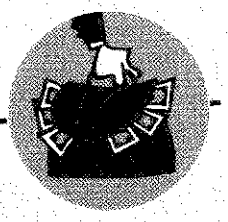
While we're mooning over our presidential dreamboat, we feel a touch of sadness. Can it really be possible that a challenger could combine all, most, or even one of the qualities we admire? Given the draining, demeaning process of a long presidential campaign, and an electorate long accustomed to demanding ever bigger doses of government largess, it's a given that we'll end up with a candidate who combines the worst aspects of the dream team's members. From our nightmares, we've concocted the Democratic dud we'll actually get:

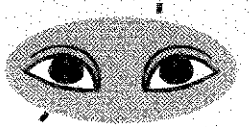
The Fast Hands of John Edwards. His lucrative career as the Southeast's King of Lawsuits suggests a presidency that would bankrupt all Americans, except for attorneys.

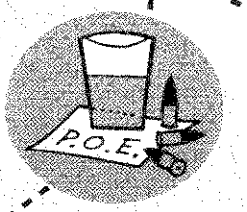
The Tarnished Tongue of Al Sharpton. Yes, he's a better standup comic than most late-night talk show hosts, but he's also one whose career was made by a brazen act of demagoguery for which he's never apologized. Would the reverend name Tawana Brawley the first head of a new U.S. Office of Sexual Complaints?

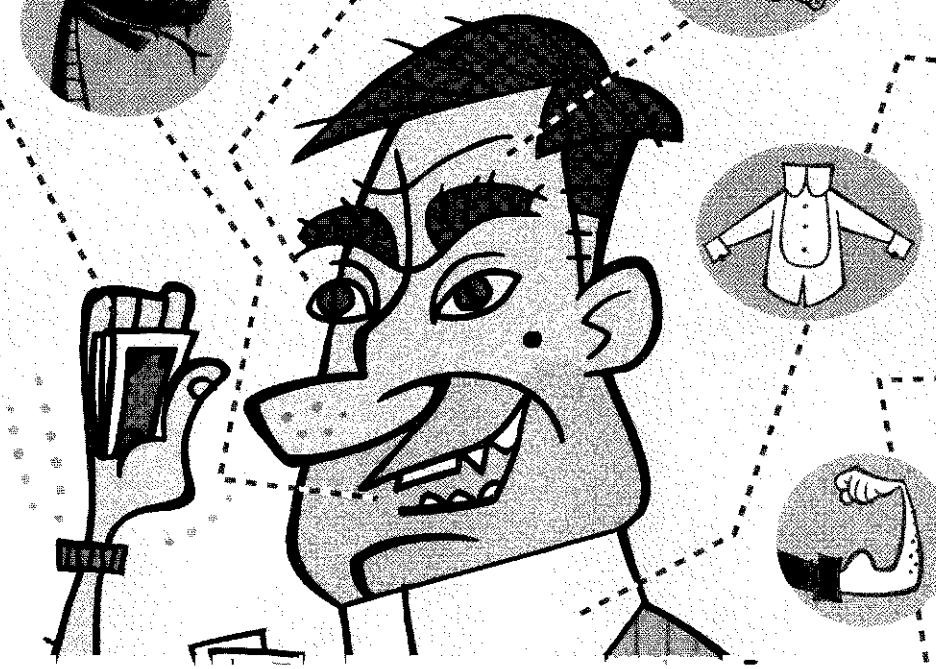
The Hungry Eyes of Howard Dean. The Green Mountain State's answer to Ralph Nader would not only repeal the paltry tax cuts that Bush muscled through, he would "reregulate" the media and large swatches of the U.S. economy, thereby returning us to those thrilling days when three networks dominated television and air travel was only for the rich.

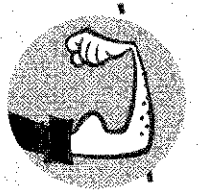
The Strangelovian Madness of Wesley Clark. The general's hopelessly shifting positions on wars great and small follow a Poisson distribution of foreign policy overreach. That and his shape-shifting on abortion, party affiliation, and who knows what else suggest there's at least one voice too many in his head. (It doesn't help that he's gotten endorsements from both Michael Moore and Madonna.)









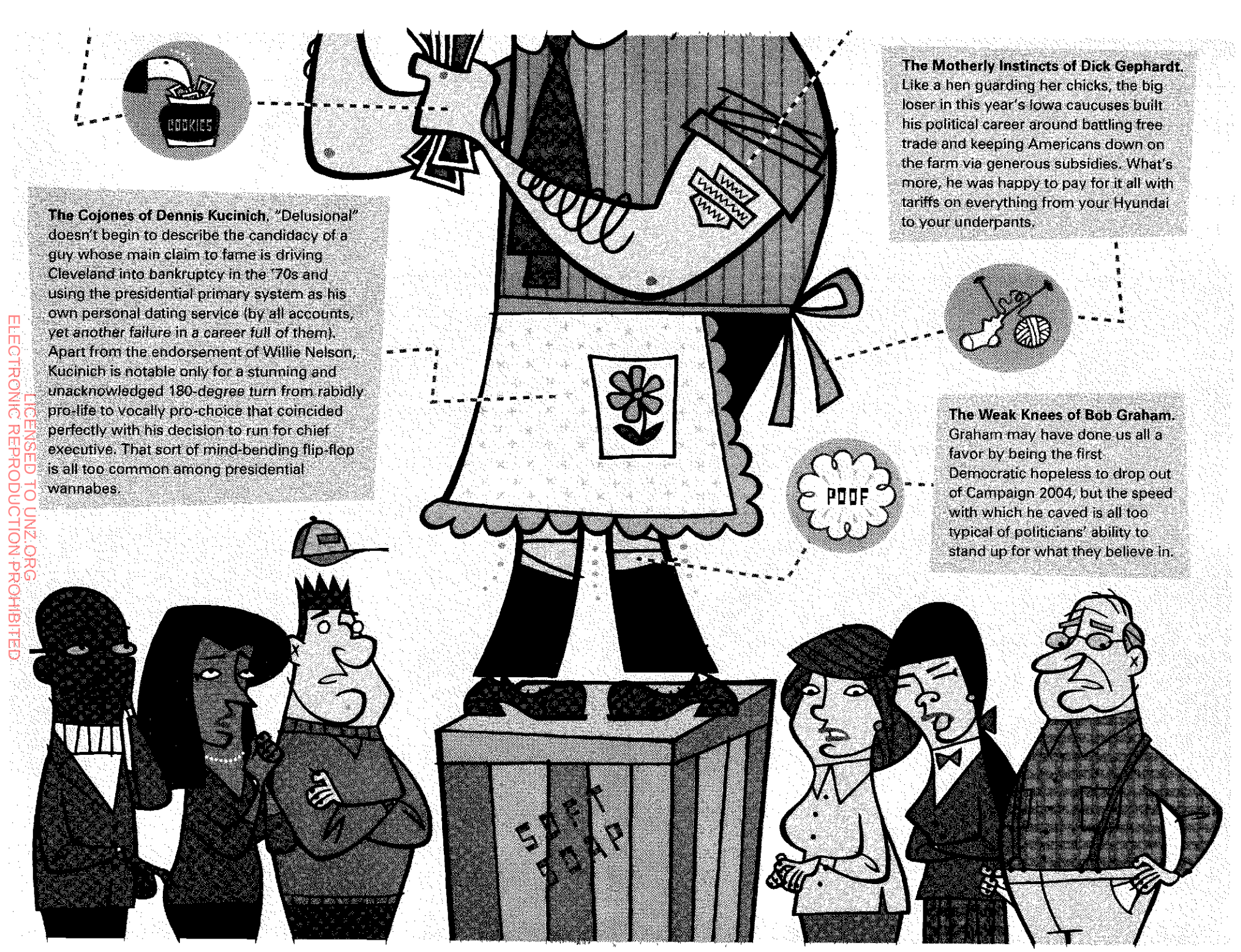


The Starched Shirt of Joe Lieberman. The Nutmeg State senator is a nutcase when it comes to pop culture, which he finds too violent and sexy for children of all ages; with Bill Bennett, he used to hand out Silver Sewer Awards to the media's "top cultural polluters." More recently, Lieberman has announced plans to fight the War on Evil through Twinkie Taxes and duties on other "fatty foods."

The Sticky Fingers of Carol Moseley-Braun. Beyond her disturbing friendships with a former dictator of Nigeria and a boyfriend/staffer charged with sexual harassment, Moseley-Braun allegedly used nearly $300,000 in political campaign funds for personal expenses. Her questionable 1990 pocketing of money due her mother that was supposed to be reported to Medicaid gave new meaning to the word privatization.

The Pumped-Up Biceps of John Kerry. His bizarre Harley-riding, chopper-piloting, reporter-threatening efforts to show executive manliness would have herniated a gorilla, but his Jesuitical denials that he ever favored force against Iraq, the No Child Left Behind Act, the USA PATRIOT Act, or NAFTA, all of which he voted for, make it clear that he's a 98-pound weakling when it comes to standing by his record.

ELECTRONIC REPRODUCTION PROHIBITED. LICENSED TO UNZ.ORG



The Cojones of Dennis Kucinich. "Delusional" doesn't begin to describe the candidacy of a guy whose main claim to fame is driving Cleveland into bankruptcy in the '70s and using the presidential primary system as his own personal dating service (by all accounts, yet another failure in a career full of them). Apart from the endorsement of Willie Nelson, Kucinich is notable only for a stunning and unacknowledged 180-degree turn from rabidly pro-life to vocally pro-choice that coincided perfectly with his decision to run for chief executive. That sort of mind-bending flip-flop is all too common among presidential wannabes.

The Motherly Instincts of Dick Gephardt. Like a hen guarding her chicks, the big loser in this year's Iowa caucuses built his political career around battling free trade and keeping Americans down on the farm via generous subsidies. What's more, he was happy to pay for it all with tariffs on everything from your Hyundai to your underpants.

The Weak Knees of Bob Graham. Graham may have done us all a favor by being the first Democratic hopeless to drop out of Campaign 2004, but the speed with which he caved is all too typical of politicians' ability to stand up for what they believe in.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Regulation for Dummies

Is the FDA necessary?

Todd Seavey

Protecting America's Health: The FDA, Business, and One Hundred Years of Regulation, by Philip J. Hilts, New York: Alfred A. Knopf, 397 pages, $26.95

SHOULD THE LAW be fashioned for stupid people?

That's not a question *Protecting America's Health* asks explicitly—and the author, *New York Times* science writer Philip J. Hilts, no doubt would object to characterizing millions of American consumers as stupid. But it is a question that must be mulled by free market advocates, against whom Hilts explicitly directs his polemic in defense of the U.S. Food and Drug Administration and the regulations it issues.

It is tempting for free market advocates to say that the FDA could be eliminated outright—replaced by nothing at all—so that customers could work out for themselves, or with the help of advice columns and ratings services, which products were dangerous or ineffective. A few idiots might opt for deadly medicine or adulterated food on the rare occasions when businesses were shortsighted enough to sell such things, but that possibility should not stand in the way of experimentation by the rest of us. Or so the argument goes.

In contrast to this position—which we might sum up as "Buyer beware, bonehead!"—Hilts makes the case that whether it seems like wise business practice or not, completely unregulated food and drug companies will tend, if history is any guide, to get away with any corner cutting and exaggeration they can and even the occasional negligent homicide. No one sets out to kill the customer, of course, but there is a powerful temptation to downplay the likelihood that your product will kill people once you've invested a fortune in putting it on the market, especially if it takes close attention to statistics to notice the deaths.

If it is only uninformed morons who are at risk in a laissez-faire environment, one must conclude that there were an awful lot of morons in the 19th century (and that we may not be that much wiser today). As Hilts describes it, the late 19th and early 20th centuries were a time when the newfound ease of production, transportation, and advertising made it possible to deceive masses of anonymous consumers who would not long have tolerated such lies from their relatives and neighbors. "In chocolate, chemists found ground-up soap, beans, and peas," he writes. "To flour was added chalk, clay, or plaster of paris...In examining brown sugar, researchers often found that a substantial portion of it was the carcasses of lice, together with some living ones."

Hilts calls the period "the grand era of the quack remedy" and describes the highly profitable sale of patent medicines that did nothing at all—or, in some cases, did serious harm—with their ingredients kept secret from both doctors and patients. Fines for mislabeling were small. In 1906 the maker of a lethal potion touted as a headache cure, called Cuforhedake Brane-Fude, was one of the first to be prosecuted under new laws requiring honest labeling of foods and drugs. After making about $2 million on the product, killing scores of customers, and being fined $700, the maker of Brane-Fude was, in the words of the chief of the government's Bureau of Chemistry, "just $1,999,300 ahead." Advertising of that day routinely described opiates and colored water as elixirs capable of curing cancer, syphilis, arthritis, and other ailments.

As if subconsciously influenced by the muckraking journalists of that era, Hilts rails against the greed of the trusts and combinations that foisted their shoddy wares on a duped populace. One almost expects to find *plutocrats* and *fat cats* in the index. Hilts describes the Progressive attitudes

Advertising "Montana Indian Remedies" © CORBIS

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of Teddy Roosevelt with approval and fawningly portrays modern-day anti-corporate activists such as Ralph Nader and Sidney Wolfe as "people who work to solve public problems with fact-gathering and no motive of personal gain." But even if you dismiss Hilts' politics, you're left with the historical facts he describes and the question of how to keep such things from happening again.

By the mid-20th century, the Bureau of Chemistry had grown into the FDA, and residual industry objections to regulation were becoming the stuff of parody. Hilts quotes a sarcastic article from a New Deal–era issue of *The Nation* saying that food and drug laws challenge "the sacred right of freeborn Americans to advertise and sell horse liniment as a remedy for tuberculosis...his God-given right to advertise and sell extract of horsetail weed as a cure for diabetes."

In the 1940s and '50s, there gradually developed the modern two-step performed by the FDA and drug companies, in which the companies must gear their production processes from the very beginning to the eventual necessity of proving their products' efficacy and safety to the FDA. One interesting lesson of *Protecting America's Health* is that, rather than being merely a bureaucratic imposition on scientific progress, the FDA was arguably the co-inventor of the clinical trial process, which involves statistically comparing a large group of patients who are given a new treatment to a control group of patients who are not. This is the process on which modern medicine founds most of its claims.

It is not unreasonable to argue that companies making scientific claims ought to have scientific evidence to back them up, and clinical trials are the best means we have yet devised for getting that evidence. It is no coincidence that many of the FDA's harshest critics—aside from those who object to regulation on principle—are adherents of "alternative" medical methods that would never withstand the scrutiny of carefully constructed clinical trials, such as most herbal remedies and virtually all "homeopathic" ones. Many of the alternative medicine adherents argue against the very idea of clinical trials, saying that biology varies so much from individual to individual that no meaningful conclusions can be drawn about a remedy from impersonal trials on large numbers of people.

The number of people who have died or suffered while waiting for useful drugs to be approved by the FDA may outnumber those saved by keeping bad drugs off the market.

Even if we were to conclude that clinical trials are grievously flawed, though, it is unclear why we should embrace mere anecdote or the word of the local Chinese herbalist—heavily influenced by subjective impressions, placebo effects, and poor number crunching—as a superior guide to truth. Hilts is particularly critical of the 1994 law that enabled makers of vitamins and herbal supplements to do an end run around the FDA by claiming their products are mere food, not medicine, despite the fact that their products' labels are replete with health claims and their sales presumably are largely a function of consumers' belief in these claims.

Mainstream pharmaceutical companies, by contrast, today are largely the product of a weeding process that resulted from the FDA's mid-century imposition of scientific standards and clinical trials. Far from burdening countless useful products in order to stop only one or two disastrously harmful drugs, the mid-century culling of drugs that were based on groundless, unscientific claims caused *most* drugs of that time to be discarded as useless or redundant. As Hilts says, changes in that period "weeded out the brutal, the stupid, and the needless." Although not as dangerous or as preposterously promoted as the patent remedies of the 19th century, the drug business of a half-century ago still contained much that was ineffective or of dubious value. To the extent that the FDA has helped winnow the mainstream drug market down to scientifically proven treatments, it has been a help rather than hindrance.

Unfortunately, the FDA does not always function properly, and Hilts has little interest in dwelling on the negatives. Biotech has faced particularly unreasonable FDA hurdles in recent years. Henry I. Miller, a former FDA official who is now a director of the anti–junk science group I work for, the American Council on Science and Health (ACSH), notes in an article on ACSH's Web site that the FDA's approval process seems to be getting slower, despite laws intended to streamline it. "In the early '80s," he writes, "FDA review of human insulin and human growth hormone had lasted only months—five and eleven, respectively," but "FDA officials reviewed the application for [biotech firm] Calgene's long-shelf-life tomato for two years before completing the process."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Worse, Miller notes, the FDA routinely denies approval to successful products already used in Europe, holding up use in the U.S. of items ranging from injectable antibiotics for resistant pathogens to a vaccine against meningitis. Economists calculate that the number of people who have died or suffered while waiting for useful drugs to be approved by the FDA may outnumber those saved by keeping bad drugs off the market. In a 2000 review of economists' reports on the FDA, Santa Clara University economist Daniel B. Klein reported that he was unable to find a single one who felt the agency approved drugs quickly enough. He found economists' opinions on what to do with the FDA "ranging in degrees from gradual decontrol to outright abolition of the agency."

Hilts addresses some individual examples of FDA foot dragging, showing that the body count in each case has been exaggerated by the agency's critics. But he does not grapple with the larger theoretical argument that the FDA may cost more lives than it saves (though he does debunk some of the most commonly cited examples of blocked miracle treatments). In a lesser offense against economics, Hilts places the cost of FDA regulation at a mere $3 or $4 per citizen each year, an estimate that reflects only the agency's budget, not the immense regulatory costs it shifts onto companies by requiring them to do clinical trials, let alone the costs in terms of drugs delayed or blocked.

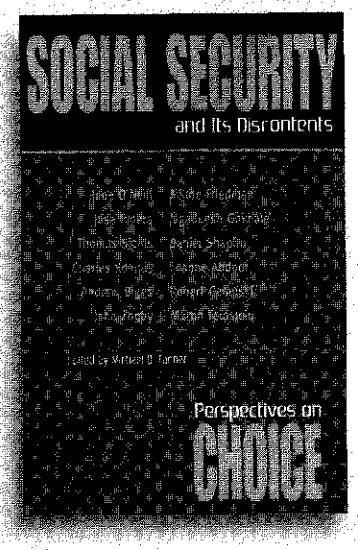
It is not merely the use of exotic, experimental new drugs that the FDA stymies. It also forbids companies to promote "off-label" uses of drugs—that is, demonstrably beneficial, even life-saving, uses for which a drug was not originally intended and for which it has not yet been approved by the FDA. As journalist James Bovard notes on the ACSH Web site, a 1994 *British Medical Journal* article estimated that some 10,000 American lives could be saved each year if more people were aware that daily aspirin use can lower the risk of heart attack. "Yet the FDA has prohibited such notices," Bovard writes. "And since no company has a patent on aspirin, no company has the incentive to spend the tens of millions of dollars for clinical trials and other tests necessary to satisfy the agency."

While it is worth calculating the number of people who have died while awaiting the FDA's approval of new treatments, we cannot merely tote up those numbers and weigh them against the handful of people killed by thalidomide and other bad drugs. To be fair, we must instead ask, as Hilts implicitly does, what the pharmaceutical industry would look like in the absence of the scientific discipline the FDA has imposed. We cannot assume that only the beneficial medicines we now know would be marketed, or that the disasters would be limited to the ones we have already seen. In the ambiguous realms of science and marketing, even mostly well-meaning companies will tend to err on the side of puffery and concealment of blunders.

Many of the harshest economic criticisms of the FDA are built on economist Sam Peltzman's 1973 study that showed fewer new drugs created in recent decades than in the early-to-mid 20th century. But Peltzman's study did little to adjust for the countless redundant or little-improved medications that were touted as new

"A must-have compilation of the best work on Social Security reform."

—*Larry Lindsey, Former Economic Adviser to President Bush*



As Social Security heads toward insolvency, reform is on President Bush's agenda. In this book, more than a dozen leading Social Security experts discuss the need to reform the program by giving workers the choice to invest a portion of their Social Security taxes in private accounts. Among the issues discussed are the problems of the current system, the various proposals for reform, and the impact of reforms on women, the poor, and minorities. Contributors include Milton Friedman, Martin Feldstein, June O'Neill, José Piñera, Andrew Biggs, Leanne Abdnor, and Michael Tanner.

March 2004
Cloth $29.95 ISBN 1-930865-55-4

Available at bookstores nationwide
www.cato.org • 800-767-1241

CATO INSTITUTE

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

miracle drugs in the old days. Nor did Peltzman adequately take into account the inevitably slowed pace of fundamental pharmaceutical breakthroughs. Hence the apparent lag in progress that Peltzman's simple graphs depicted does not tell the whole story.

Think of the FDA, when it functions properly, not merely as a hobbling bureaucracy but as anti-fraud law applied to food and medicine. The question is how to tease out the FDA's useful functions—preventing fraud and injury—while eliminating its more burdensome regulatory functions. Instead of prior approval of drugs, might we simply have harsh legal penalties and financial compensation of victims after the fact when things go awry? Perhaps the FDA could be replaced with private mechanisms, probably involving a much more active role for trial lawyers, a solution almost as unacceptable to free marketeers as regulatory agencies but at least a private and decentralized one. (What does private, decentralized retaliation against widespread fraud and injury look like if not a class action suit?) Or perhaps the FDA could be replaced by something akin to a supersized Underwriters Laboratories, the private product testing organization supported by manufacturers that want its famous "UL" stamp of approval.

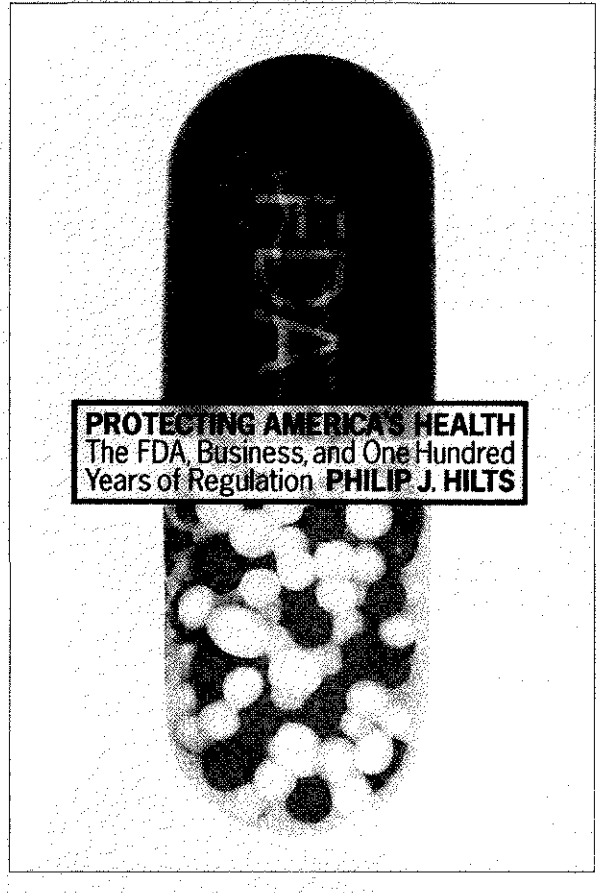
Just as we cannot know exactly what the modern food and drug market would look like without FDA oversight—neither what new horrors nor what currently stymied innovations it might bring—we cannot know for sure what the FDA might have looked like had it evolved differently. Early on, its primary legal function, as Hilts explains, was to guarantee safety rather than to ensure efficacy. Its failure to do the former contributed, in typical government fashion, to the expansion of its power and the adoption of its sweeping powers of pre-market approval and its right to certify that drugs are effective—a costly hurdle for drug manufacturers, whose research and development costs are nowadays largely a function of the need to please the FDA.

Might new opportunities for innovation be opened up simply by eliminating this guarantor-of-efficacy role? Let the FDA, some successor organization, or the civil justice system punish those who do harm or sell dangerous goods, but leave the market to judge what works and what doesn't.

That sounds like a freedom-respecting solution, but there is a complication: Just as the anti-fraud role of the FDA bled into the efficacy-proving role historically, the two functions can be difficult to separate in principle. A drug that is marketed as a memory enhancer or heart strengthener, with a tiny fig-leaf disclaimer saying its vaunted powers do not have the imprimatur of the FDA, can do significant harm without inflicting direct thalidomide-style damage by leading people to avoid more effective treatment or simply by causing them to spend their money in vain. Since few people deliberately spend their money on ineffective products, almost everyone who purchases a scientifically unproven medication, such as most of the alternative remedies, vitamins, and dietary supplements for sale in the average health store, is arguably being defrauded.

But is that a matter for a federal bureaucracy or simply for the courts? Where one comes down on that question will hinge in part on how savvy one thinks the general public is, relative to scientific experts (such as the ones who end up working for the FDA), about evaluating medical claims. To anyone acquainted with the general public's track record, the case for the bureaucracy looks surprisingly strong.

Such questions are beyond the scope of Hilts' book. His argument proceeds more on historical than theoretical grounds, and as a result he sometimes glosses over important ideas in a way that weakens his case. Despite devot-



Protecting America's Health (cover)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ing several chapters to the regulatory battles of the last few decades, he only briefly mentions the high-dose lab tests on rodents that are the main means of labeling substances "carcinogens" these days. The so-called Delaney Clause of the 1958 Food, Drug, and Cosmetic Act gave the FDA the absurd responsibility of eliminating any trace whatsoever of chemicals capable of causing cancer in lab animals. But roughly half the chemicals in the world, natural or man-made, can induce cancer in lab animals in high enough doses, and that is not in itself good evidence of a human health threat. To many scientists who criticize the FDA and the Environmental Protection Agency, the exaggerated claims made for rodent tests are a primary example of regulatory excess.

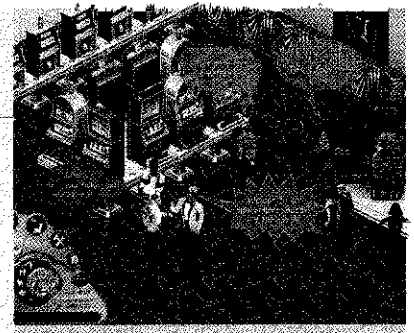
Yet Hilts touts the removal of numerous "carcinogens" from the food supply as unvarnished victories for the FDA. He uncritically repeats claims that the sweetener saccharin was a potential human carcinogen that deserved to be banned in the 1970s, although later research suggests that the biological mechanisms that made it carcinogenic in rodents are not present in humans. Hilts also at times makes the common journalistic error of telling us about deaths associated with a product without telling us the normal background rate of deaths of that sort, information we need to have some idea how much the product worsened things, if at all.

Still, the book presents enough compelling horror stories to convince even the skeptical reader that there have been menaces and mishaps out there for the FDA to fight. Among other things, Hilts discusses painkillers that destroy liver function; the soft-pedaling of scientists' warnings about severe side effects; the antibiotic chloramphenicol, which was only reluctantly and half-heartedly recalled by its manufacturer even after the company learned the drug caused a fatal blood disorder; and heart medications that quietly killed more people than they saved, even while the FDA was criticized for not approving them fast enough.

The FDA could be radically improved or even supplanted, but it would be wrong to think that the agency's inefficiency or its inherently coercive nature prove it is performing no useful functions or providing no useful scientific information. The FDA, for complex historical reasons, has become a locus of scientific standards and a repository of expertise that should not be discarded. It has helped shape the achievements of pharmaceutical companies and by extension mainstream medicine in a process of give and take as important as the shaping of business by laws against theft.

One sad conclusion you have to draw from Hilts' book is that if you sell almost anything as a cure-all, lots of people will fall for it. To get back to my opening question: Shouldn't the law step in on behalf of the stupid as readily as it would on behalf of a genius who is duped by a brilliant, elaborate scam? Before you say no, you will at least have to contend with the disturbing picture Hilts paints of the days before the FDA as we know it. There is no avoiding some sort of legal constraint on food and drug sales, unless we want a modern version of the 19th-century free-for-all that poured mislabeled opium and disguised wood chips down the gullets of the ignorant. That's not freedom. That's fraud. ▮

Todd Seavey (seavey@acsh.org) edits HealthFactsAndFears.com for the American Council on Science and Health. He is writing a book titled Conservatism for Punks.



The Sims Online

Hobbes in Cyberspace

Life in an online game world proves nasty, brutish, and short.

Jesse Walker

When the press learned what had been happening in Alphaville, its band of outsiders began to file breathless reports. The city, they said, had been infected with crime, depravity, and now the heavy hand of censorship: Peter Ludlow, editor of *The Alphaville Herald*, had been run out of town for daring to tell what goes on there.

Sort of. Alphaville exists only in cyberspace—it's one of the larger settlements in the game *The Sims Online*. The *Herald* is a weblog that chronicles events in the imaginary city. Officially, Ludlow was expelled for linking within the game to a commercial site outside it; the claim that he was tossed for truth telling is merely an educated suspicion. "I've got to think it was connected to the stories I was running on the children involved in the cyberbrothels," he says.

To understand *The Sims Online*, you have to start with *The Sims*, the brainchild of designer Will Wright. Influenced by the architect Christopher »

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Fools for Communism

Still apologists after all these years

Glenn Garvin

In Denial: Historians, Communism and Espionage, by John Earl Haynes and Harvey Klehr, San Francisco: Encounter Books, 300 pages, $25.95

In 1983 the Indiana University historian Robert F. Byrnes collected essays from 35 experts on the Soviet Union—the cream of American academia—in a book titled *After Brezhnev*. Their conclusion: Any U.S. thought of winning the Cold War was a pipe dream. "The Soviet Union is going to remain a stable state, with a very stable, conservative, immobile government," Byrnes said in an interview, summing up the book. "We don't see any collapse or weakening of the Soviet system."

Barely six years later, the Soviet empire began falling apart. By 1991 it had vanished from the face of the earth. Did Professor Byrnes call a press conference to offer an apology for the collective stupidity of his colleagues, or for his part in recording it? Did he edit a new work titled *Gosh, We Didn't Know Our Ass From Our Elbow*? Hardly. Being part of the American chattering class means never having to say you're sorry.

Journalism, academia, policy wonkery: They all maintain well-oiled Orwellian memory holes, into which errors vanish without a trace. Stern pronouncements are hurled down like thunderbolts from Zeus, and, like Zeus, their authors are totally unaccountable to mere human beings. *Time*'s Strobe Talbott decreed in 1982 that it was "wishful thinking to predict that international Communism some day will either self-destruct or so exhaust itself in internecine conflict that other nations will no longer be threatened." A Wall Street analyst who misjudged a stock so badly would find himself living under a bridge, if not sharing a cell with Martha Stewart. But Talbott instead became Bill Clinton's deputy secretary of state, where he could apply his perspicacious geopolitical perceptual powers to Osama bin Laden.

One of the most striking revelations in the exposure of the Jayson Blair disaster at *The New York Times* was his fabrication of an entire visit to the West Virginia farm of POW Jessica Lynch's family, including detailed descriptions of rivers and cattle herds that did not exist. Lynch's parents read the story, laughed at the ludicrous falsehoods, but made no attempt to correct them. It never occurred to them that there was any point. Anybody who reads papers or watches television news knows how rare corrections are.

That's especially true when the mistake is not a discrete, concrete fact like a misspelled name but a broader error of perspective or analysis. It took decades for the *Times* to admit that the Pulitzer Prize–winning reporting of its Stalin-era Moscow bureau chief, Walter Duranty, was delusionary drivel. Even so, his Pulitzer stands. And the *Times* has yet to bite the bullet on its correspondent Herbert J. Matthews, the clueless Castro groupie who wrote that the comandante was winning his guerrilla war in Cuba at a time when he actually commanded fewer than 20 men.

Sometimes the refusal to confront errors is simple hubris. But often it masks a queasy reluctance to start down a path of self-examination, for fear of where it will lead. During the final days of the 1990 election in Nicaragua, ABC News released the results of a poll showing the ruling Sandinista Party ahead by 16 percentage points. "For the Bush Administration and the Reagan Administration before it, the poll hints at a simple truth: After years of trying to get rid of the Sandinistas, there is not much to show for their efforts," Peter Jennings gravely informed his viewers. But a few days later, the Sandinistas *lost*—by 14 percentage points. The "simple truth" was really that the poll, like so much of what ABC and other American news media outlets had been reporting from Nicaragua for the previous decade, was utterly, dumbfoundingly, whoppingly wrong. But if you think that triggered a frenzy of soul searching at ABC—about how the poll could have been so mistaken, about how none of the network's reporters sensed anything askew—then guess again. Instead, Jennings dismissed the subject the next day with a single smirking reference to the inscrutability of Nicaraguans.

What went unreported was a research project conducted during the election by the University of Michigan, which by deploying various groups of student pollsters discovered that Nicaraguans mistrusted foreigners, presumed them active allies of the Sandinistas, and persistently lied to them. That fact had calamitous implications not only for what reporters had been writing about Nicaragua in the previous decade but for the reporters themselves. What had they done to make Nicaraguans view them as a foreign auxiliary of the Sandinista Party? Could it be that journalists

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

covering Nicaragua had a (gasp!) ideological bias in favor of the Sandinistas? And could it be a coincidence that you're probably reading about this study for the first time?

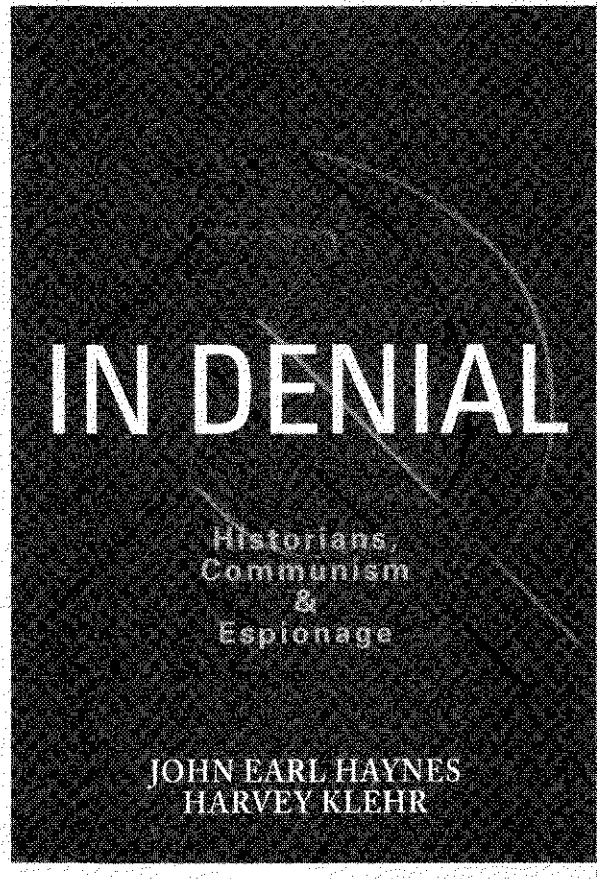
The end of the Cold War has produced many such numbing silences. The speed with which the Soviet empire imploded and the economic ruin and popular revulsion that were revealed have made it clear that baby boomer intellectuals and journalists, viewing the world through the distorted lens of Vietnam, overwhelmingly got it wrong. Peasants ate less and were slaughtered more on the other side of the Iron Curtain; the jails were fuller; the KGB's list was a lot longer and a lot deadlier than Joe McCarthy's. A team of French historians calculated the worldwide death toll of communism during the 20th century at more than 93 million. When Hoover Institution historian Robert Conquest used newly available data from the Soviet Union to update *The Great Terror*, his account of Stalin's murderous purges of the 1930s, his publishers asked for a new title. "How about *I Told You So, You Fucking Fools*?" Conquest suggested.

The Conquest anecdote comes from *In Denial: Historians, Communism and Espionage*, an improbably riveting dispatch from the battlefields of historiography by scholars John Earl Haynes and Harvey Klehr. Chilling and often perversely funny, it details the intellectual sleight of hand to which many American historians of communism and the Soviet Union have resorted as newly revealed archives in Moscow and Washington suggest they were, well, fucking fools.

Their efforts haven't been very successful. As Haynes and Klehr note, the world's final redoubt of communism is not Havana or Pyongyang but American college campuses: "The nostalgic afterlife of communism in the United States has outlived most of the real Communist regimes around the world....A sizable cadre of American intellectuals now openly applaud and apologize for one of the bloodiest ideologies of human history, and instead of being treated as pariahs, they hold distinguished positions in American higher education and cultural life."

Bold words, especially in academia, where suggesting somebody has communist sympathies—even if he's carrying a bloody hammer and sickle in one hand and Trotsky's severed head in the other—instantly draws gleeful cries of "McCarthyism!" I say, if this be blacklisting, make the most of it:

• Miami University's Robert W. Thurston, in his 1996 book *Life and Terror in Stalin's Russia*, rejects the overwhelming evidence that Stalin's purges took the lives of millions. He concedes only 681,692 executions in the years 1937 and 1938, and a mere 2.5 million arrests.



In Denial (cover)

Alexander and the economist David Friedman, Wright created a game with no winners, losers, or externally imposed goals: just the humdrum interactions and acquisitions of ordinary life. (Well, somewhat ordinary life. Players haven't been above creating *Sims* worlds featuring Spider-Man or the cast of *Gilligan's Island*.) More than 28 million copies of *The Sims* and its expansion packs have sold since it was published in 2000, making it the best-selling video game ever.

So there was a lot of fanfare when, after a multimillion-dollar investment, Wright's employer Electronic Arts unveiled the online version of *The Sims* in December 2002. Now you wouldn't just be able to create your own characters and households. You could let them interact with other characters in a shared virtual world. (See "Free Play," page 20.)

But the new version earned poor reviews. *The Sims Online* was unpopular not just with the gaming subculture, which never really understood *The Sims*' appeal to begin with, but also with *Sims* fans, who found it less rewarding than the original. The San Jose *Mercury News* described it as "an intriguing, technically elegant virtual playground that lacks only one crucial ingredient for success: fun."

Worse, some people found that fun by causing trouble for other players. "That style of game play is called 'grief' game play," says Mike Sellers of the Austin-based company »

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Dear Subscribers,

We hope your issue of **reason** arrives safe and sound each month. But if it doesn't—or if you have any other subscription problems—please accept our apologies and keep in mind these helpful hints:

■ Expiration Date. You will find your subscription expiration date printed above your name on the mailing label.

■ Change of Address. Please contact us with both your old address (exactly as it appears on your mailing label) and your new address.

■ Missing Issue. If you do not receive an issue or receive a damaged issue, please let us know and we will send out a replacement immediately.

■ Duplicate Copies. If you receive two copies of the same issue, check both mailing labels carefully—the slightest difference can cause problems. Then send us both labels, indicating which is correct, and we'll rectify the matter.

■ Billing Problems. The fastest way to solve a billing problem of any kind (billing error, duplicate invoice, etc.) is to contact us explaining the error. We will take corrective steps immediately.

Your have four options for contacting us with your subscription inquiry or problem:

- **On the Web, visit:** www.reason.com/customers.shtml
- **Mail subscriber services at:** P.O. Box 526, Mt. Morris, IL 61065
- **Call:** 1-888-reason-8 (1-888-732-7668)
- **Send e-mail to:** subscribe@reason.com

reason
Free Minds and Free Markets

Even using those low-ball figures, that means that nearly one of every 20 adult Soviet males went to prison and that more than 900 of them were executed per day. Nonetheless, Thurston says Stalin has gotten a bad rap: There was no "mass terror...extensive fear did not exist...[and] Stalin was not guilty of mass first-degree murder."

• Theodore Von Laue, a professor emeritus of history at Clark University, goes further in a 1999 essay in *The Historian*. He says it's the damnable Russian peasantry that ought to be begging poor *Stalin* for forgiveness: "He supervised the near-chaotic transformation of peasant Eurasia into an urban, industrialized superpower under unprecedented adversities. Though his achievements were at the cost of exorbitant sacrifice of human beings and natural resources, they were on a scale commensurate with the cruelty of two world wars. With the heroic help of his uncomprehending people, Stalin provided his country, still highly vulnerable, with a territorial security absent in all history." And Stalin was no mere poet, Von Laue adds, but a damn fine technocrat too: "The sophisticated design of Soviet totalitarianism has perhaps not been sufficiently appreciated."

• Columbia's Eric Foner, a past president of both the American Historical Association and the Organization of American Historians, staking his bid as founder of what might be called the Smiley-Face School of History, denounces "the obsessive need to fill in the blank pages in the history of the Soviet era." He wasn't talking about pesky American historians using the Freedom of Information Act to ferret out new horror stories about J. Edgar Hoover but about a Moscow exhibition on the Soviet gulag. What possible good could come of learning the details of *that*?

Foner, Von Laue, and Thurston are not lone nuts, the academic equivalents of Mark Lane and Ramsey Clark, but important revisionist historians. The revisionists, mostly baby boomer survivors of the New Left, have been conducting their own Cold War with traditionalist historians for nearly four decades. Unlike in the rest of the world, in academia their side was victorious. Since the 1970s, it's been an article of faith in historical journals and university presses that the United States rather than the Soviet Union posed the greatest threat to world peace and political freedom.

The revisionists' dominion over the domestic side of Cold War history has been even more total. That's been written as melodrama, with the U.S. Communist Party, or CPUSA—a collection of amiable folk singers, brave anti-segregationists, and Steinbeckian labor organizers—trying to rescue the maiden of American democracy from the railroad tracks where McCarthy, J. Edgar Hoover, and the House Committee on Un-American Activities (HUAC) had tied her down. The revisionists reluctantly gave some ground on the nature of the Soviet Union as Mikhail Gorbachev's *glasnost* allowed some ugly facts to bubble to the surface, but they were adamant on the U.S. side: The Communist Party was just a lefty variant of the Republicans and Democrats, and people like Alger Hiss and the Rosenbergs were innocent martyrs, the victims of a demented witch hunt.

That myth was reduced to rubble by a series of crushing blows in the wake of the collapse of the Soviet

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Union. First, in 1992, the post-Soviet government of Boris Yeltsin threw open the Communist Party's records, including the enormous collection of documents held by the Communist International, or Comintern, which directed the affairs of foreign Communist parties during the first half of the century. Two years later, the Russian SVR, the cash-strapped successor to the KGB, allowed brief and limited access to some of its old files to a handful of Western historians in return for a substantial gratuity. And

In academia, suggesting somebody has communist sympathies—even if he's carrying a bloody hammer and sickle in one hand and Trotsky's severed head in the other—instantly draws gleeful cries of "McCarthyism!"

finally, in 1995, the U.S. government released thousands of KGB cables intercepted and decoded in the 1940s in a top-secret operation known as Venona. In all, some 2 million pages of new documents became available, a historical payload of unfathomable proportions and inestimable impact.

The new picture of American Communists that emerged looked nothing like the one painted by the revisionists. The CPUSA was founded in Moscow, funded from Moscow (as late as 1988 Gus Hall was signing receipts for $3 million a year), and directed by Moscow; the Comintern reviewed everything from the party's printing bills to its public explanations of the nuances of the Hitler-Stalin pact, and the slightest misstep could bring scorching rebukes.

Worse yet, it really was a nest of spies: Hundreds of CPUSA members had infiltrated the American government and were passing information to the KGB. They honeycombed the State Department and the Office of Strategic Services. Virtually all of the revisionists' martyrs really were spilling secrets to the Kremlin, including Alger Hiss, the Rosenbergs, and a pair of Roosevelt aides, Harry Dexter White and Lauchlin Currie, who died (White of a heart attack, Currie of a jump or fall from a window) after being questioned by HUAC. The CPUSA would do literally anything for Moscow, even kill: Party members were intimately involved in assassination plots against the heretic Bolshevik Leon Trotsky, and later they would assist in unsuccessful KGB plots to break his murderer out of jail. More than 350 spies, nearly all CPUSA members, are identified in the Venona cable traffic alone. One KGB cable gave Earl Browder, the party chief from 1930 to 1945, credit for personal recruitment of 18 spies. Another wondered how the KGB would ever operate in the United States without the help of the CPUSA.

If a similar treasure trove of documentary evidence about the Civil War had been uncovered—say, establishing that Lincoln's government had been riddled with Confederate spies and that several of his cabinet members were secret slaveholders—half the university presses in America would have burned out from overuse. But the revelations of CPUSA peonage to Moscow have produced only a handful of books from U.S. historians. Among the most notable have been three by Klehr and Haynes: *The Secret World of American Communism*, *The Soviet World of American Communism* (both co-authored with Russian documentarians), and *Venona: Decoding Soviet Espionage in America*.

Klehr, who teaches at Emory University, and Haynes, a historian with the Library of Congress, were among the first American scholars to examine the Communist Party archives thrown open in Moscow. Though traditionalist historians with a leery view of American Communists, they were hardly McCarthyite mad dogs. As recently as 1992, in *The American Communist*

Online Alchemy, who was lead designer of the forthcoming *Sims 2* when he worked for Electronic Arts. Thieves, vandals, and con artists appeared, and online mafias emerged.

One response was a player-organized virtual authority, dubbed the Sim Shadow Government. "We weren't playing the game as hoodlums," founder Piers Mathieson told the *Mercury News* last summer, "We were playing the game as protectors of the city." For those within the protectorate, though, the would-be state looked like yet another mafia, and the result was a civil war. Even Mathieson, writing the *Mercury News* after its article appeared, admitted that "we use the same tactics as mafias in *The Sims Online*." The difference, he insisted, was that "we only use these tactics against those who cause problems for others."

Enter Ludlow. A professor of linguistics and philosophy at the University of Michigan, Ludlow was fascinated by the social behavior he saw emerging. Soon he was chronicling the Sim world's seediest side at alphavilleherald.com. "Some things you see immediately—cyberbrothels and that scene," he recalls. It took him longer to figure out the dynamics of the mafias, or to learn that some of the cyberprostitutes might, in real life, be underage. It all went into the *Herald*, and the ultimate result was his expulsion from the game, along with a crackdown by Electronic Arts on some of »

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Movement: Storming Heaven Itself, they scoffed at the idea that the CPUSA was a colony of would-be Borises and Natashas. "Espionage was not a regular activity of the American C.P.," they wrote. "The party promoted communism and the interests of the Soviet Union through political means; espionage was the business of the Soviet Union's intelligence services. To see the American Communist Party chiefly as an instrument of espionage or a sort of Fifth Column misjudges its main purpose."

What they found in the Moscow archives convinced them otherwise. However many fluffhead folk singers and guilt-tripping Hollywood glitterati it may have contained, the CPUSA, they wrote three years later in *The Secret World of American Communism*, was also "a conspiracy financed by a hostile foreign power that recruited members for clandestine work, developed an elaborate underground apparatus, and used that apparatus to collaborate with espionage services of that power."

For conceding their mistake, Klehr and Haynes have undergone the intellectual equivalent of a Stalinist show trial by their fellow historians. A constant stream of articles in academic journals and lefty magazines—even an entire conference sponsored by New York University's International Center for Advanced Studies—has pilloried them for everything from "triumphalism" (that is, they're glad Stalin didn't win the Cold War; can you imagine a historian of World War II being drummed out of the profession for expressing gratitude that Hitler didn't win?) to accepting funding from conservative foundations (which, unlike the tens of millions of dollars the CPUSA took from the Kremlin, might come with secret strings attached) to starting the Vietnam War, destroying affirmative action, and dismantling the welfare state.

reason
Free Minds and Free Markets

free minds

free markets

cool stuff

go to reason.com/stuff.shtml to see reason t-shirts, sweatshirts, mugs, caps, and more.

That bit about Vietnam came from a piece co-authored by Ellen Schrecker of Yeshiva University, who in a movement rich with unintentional self-parody nonetheless towers above the rest. We might even call her the Lucille Ball of anti-anti-communism, though, to be sure, she would never be so gauche as to associate with a pre-revolutionary Cuban like Ricky Ricardo. A prodigious apologist, Schrecker in one article conceded that Julius and Ethel Rosenberg delivered atomic secrets to the Soviets, then plaintively demanded: "Were these activities so awful?" She also coined the immortal phrase "non-traditional patriots" for the Rosenbergs, a felicitous way of saying that they lived in the United States but were loyal unto death to the Soviet Union.

Her accusation that Haynes and Klehr were a fascist Leviathan with their tentacles writhing in every right-wing plot of the past four decades appeared in *The Nation*, which, because it has 70 years of Stalinist apologias to justify, unsurprisingly offers some of the most die-hard resistance to the new Cold War scholarship. It also has contributed some hilarity to the debate, including then-editor Victor Navasky's argument that the word *espionage* was "out of context" when applied to American Communists during the Cold War. It would be more appropriate, he wrote, to say that "there were a lot of exchanges of information among people of good will."

There's no arguing with at least one part of that sentence: "a lot." One of those people of good will, KGB officer Itzhak Akhmerov, reported back to his bosses that CPUSA spies in America had provided him with enough U.S. government documents between 1942 and 1945 to fill 2,766 reels of microfilm. It apparently was a pretty one-sided exchange, since Akhmerov does not list any Soviet documents that he offered in return.

Ultimately, though, Navasky and *The Nation* turn from amusing to tendentious to dishonest as they twist and turn to avoid painful truths—none, apparently, as distressing as the guilt of Alger Hiss, the New Deal aristocrat who pumped State Department secrets to the Soviets for more than a decade. The case against Hiss, the left's protests notwithstanding, has always been overwhelming. Whittaker Chambers, a courier for a spy ring of Washington Communists that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

reported to Soviet military intelligence, identified Hiss as his contact. A former KGB agent confirmed it.

Numerous witnesses, including maids of both families, reported seeing the men together regularly, and auto registration records supported Chambers' claim that Hiss gave him a car to aid in his transport of documents filched by the spy ring. Chambers produced dozens of summaries and copies of State Department documents, all either in Hiss' handwriting or typed on his typewriter. Though the statutes of limitations made it difficult to try Hiss for espionage, he was convicted in 1950 of lying about his relationship to Chambers.

The fall of the Soviet Union has driven even more nails into Hiss' coffin. A KGB cable in the Venona files identifies a spy code-named "Ales" at the State Department whose biographical details match only Hiss. Meanwhile, an interview with another State Department spy—Noel Field, who fled behind the Iron Curtain when he fell under suspicion in 1949—was discovered in the archives of the Hungarian security police. Field related how his friend Hiss, unaware that Field was already spying for the KGB, had tried to recruit him as a source for Soviet military intelligence. The same story of the encounter between Field and Hiss (which dismayed the Soviets as a security lapse) turned up in KGB files in Moscow.

Writing in *The Nation*, Navasky dismisses all the new documents as contrivances, misunderstandings, and KGB braggadocio. What's really important, he says, is that in 1992 Hiss asked Dmitri Volkogonov, a disillusioned former Soviet general who was Boris Yeltsin's adviser on military affairs, to search intelligence archives for material on Hiss. Volkogonov replied that he had "carefully studied many documents from the archives of the intelligence services of the USSR as well as various information provided by the archives staff....I can inform you that Alger Hiss was never an agent of the intelligence services of the Soviet Union." Case closed, Navasky declares, though allowing casually that "Volkogonov later agreed with a persistent reporter that perhaps he should have qualified his declaration of Hiss' innocence because it's impossible to prove a negative."

Here's what Volkogonov actually said. He spent only two days on the "search" for documents and mostly relied on the word of KGB archivists. He didn't make any inquiries at all of Soviet military intelligence, the agency for which Hiss worked. And he had no idea the case was so controversial in the United States; he was just trying to do a favor to an old man near death. "What I saw gives no basis to claim a full clarification," Volkogonov admitted. "There's no guarantee that it was not destroyed, that it was not in other channels...Honestly, I was a bit taken aback. [Hiss' attorney] pushed me hard to say things of which I was not fully convinced."

If it seems that Navasky has turned Volkogonov's words upside down, that's not surprising, because Navasky has always lived in an upside-down universe where the moral flaw is not allegiance to a mass murderer like Stalin but turning away from him (to "crawl through the mud," in Navaskyspeak). *The Nation* has no harsh words for Paul Robeson, who refused to intervene for Russian friends who were about to be purged—only for those, such as Elia Kazan, who denounced Stalin and his American quislings. When some Afghan peasant finally points out Osama bin Laden's cave, count on Navasky and *The Nation* to call him a dirty squealer and to explain that a few airplanes crashing into skyscrapers now and again are a small price to pay for the preservation of personal politesse.

The whole "squealer" ethos is not only stupid—what kind of moron would not have wanted Mafia turncoats to testify against John

the scamsters and mobs he had described.

So what does this *mean*? Left to their own devices, players produced cities like Alphaville. So is this the world a free people starting from nothing would live in? Or is it simply the world they'd like to *pretend* to live in? Or was this just a matter of bad design—of something wrong with the game world's incentives and structure?

Sellers thinks it's the latter. The designers didn't recognize the differences between online and offline games, he argues. In particular, "They didn't think they were going to have the same kind of griefing problems that other online games have had." He also sees some kinks in the rules. "One of the ways to be successful in that game is to accrue a lot of social capital," he notes. "The way you get social capital is by being good at playing a social game. The direct analogy is to junior high school."

Ludlow offers a broader criticism. "I think the problem is that the game itself is mind-numbingly boring," he says. "It's an axiom of these games that the less there is to do, the more people gravitate toward cybersex." And maybe the occasional mob war. ■

Jesse Walker (jwalker@reason.com) is managing editor of reason.

The Sims Online

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Gotti?—but fraudulent. At a press conference last summer, I listened to the playwright Chris Trumbo argue that Elia Kazan should have been denied an Oscar for naming Hollywood Communists to HUAC. During World War II, when the Soviet Union and the United States were allied against Hitler, Trumbo's Communist father, Dalton, also named names, secretly pointing the FBI to Hollywood figures he believed were suspiciously anti-war. But there was no suggestion during the press conference that *his* screenwriting Oscar be revoked. Likewise, Trumbo's intellectual fellow travelers in academe and journalism have built entire careers on denouncing spying by the FBI and CIA but are blithely unconcerned about KGB espionage. The standard excuse, as Ellen Schrecker has written several thousand times, is that "McCarthyism did more damage to the Constitution than the American Communist Party ever did."

If that's true, it's not for want of trying by the CPUSA. If Franklin Roosevelt had died just nine or 10 months earlier, his third-term vice president, Communist sympathizer Henry Wallace, would have become president. Wallace once said that if he were president he would appoint Harry Dexter White treasury secretary and Laurence Duggan secretary of state. Both of them, we now know unambiguously from Venona cables, were Soviet spies.

More broadly, people like Schrecker can't or won't understand that their culture of denial is what *created* McCarthyism. It was the palpable indifference of the Roosevelt and Truman administrations toward Communist penetration of the American government that finally triggered the backlash led by HUAC and McCarthy. McCarthy's accusation that Roosevelt ushered in "20 years of treason" is an absurd exaggeration. But if Roosevelt didn't deserve to be executed as a spy, he most certainly ought to have been horsewhipped for his cavalier dismissal of Whittaker Chambers' accusations. As early as 1939, Chambers warned Roosevelt about Alger Hiss and named at least 12 other U.S. officials who would later be proved Soviet spies. Roosevelt airily told his aides that Chambers could "go fuck himself." The spies kept passing secrets to Moscow for another nine years, until HUAC began making noises about the case. Chambers' warning was only one of several by regretful spies during that period that first Roosevelt and then Truman ignored. Truman was so lackadaisical that the military code breakers working on the Venona Project kept it secret from him for fear word would leak back to the Soviets.

Fifty years later, the pattern is repeating itself. The character assassinations and lies of the die-hard defenders of American communism have given rise to a movement to rehabilitate McCarthy and other bully-boy anti-communists of the 1940s and '50s. Some efforts of this movement, such as George Washington University historian Arthur Herman's *Joseph McCarthy: Reexamining the Life and Legacy of America's Most Hated Senator*, are relatively judicious attempts to correct some of the exaggerations about McCarthy—for instance, the widely repeated but totally erroneous claim that he never correctly identified a single Communist. Others, such as conservative attack-blonde Ann Coulter's *Treason*, attempt a radical makeover. McCarthy (who accused everybody from Harry Truman to George Marshall of secret Soviet sympathies) was actually too charitable, Coulter argues; he was too tenderhearted to say, as she does, that all liberals—everybody from Lyndon Johnson to Tom Daschle—are traitors at heart. "Whenever the nation is under attack, from within or without, liberals side with the enemy," Coulter writes. "This is their essence."

That's idiotic, to be sure, but no more so than American University historian Anna Kasten Nelson's argument that Venona isn't important because there are all kinds of good reasons a perfectly innocent person might be secretly passing microfilm to a KGB agent. (No, she doesn't list any of them.) "It is time to move on," she wrote recently, instead of "rehashing old debates" (because, you know, historians get bored with old stuff). Then there's the psychobabble contention of Bard College's Joel Kovel that J. Edgar Hoover hunted spies not because foreign espionage is against the law but because he had some previously undiscovered Freudian condition in which anti-communism "might be interchangeably a womb or anus." Writing stuff like that amounts to handing the Coulters of the world a loaded gun and daring them to pull the trigger. As somebody once said: Have you no sense of decency, Sir? ▪

Contributing Editor Glenn Garvin (glenngarvin@hotmail.com) is the author of Everybody Had His Own Gringo: The CIA and the Contras, and (with Ana Rodriguez) Diary of a Survivor: Nineteen Years in a Cuban Women's Prison. He writes about television for the Miami Herald.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

FREEDOMFEST

"Where Free Minds Meet"

Your Last Chance to Act or Miss Out On Our Low Early Bird Rate!

Save $55.00!

May 13-15, 2004
Bally's/Paris Resort
Las Vegas, Nevada

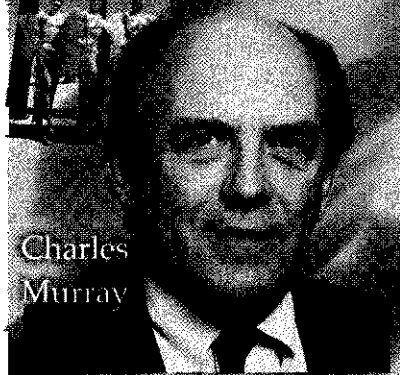
"Freedomfest is an intellectual's dream – a great place to learn, network and socialize. I wouldn't miss it for the world."
Robert Poole, Jr.
Founder, Reason Foundation

Ben Stein

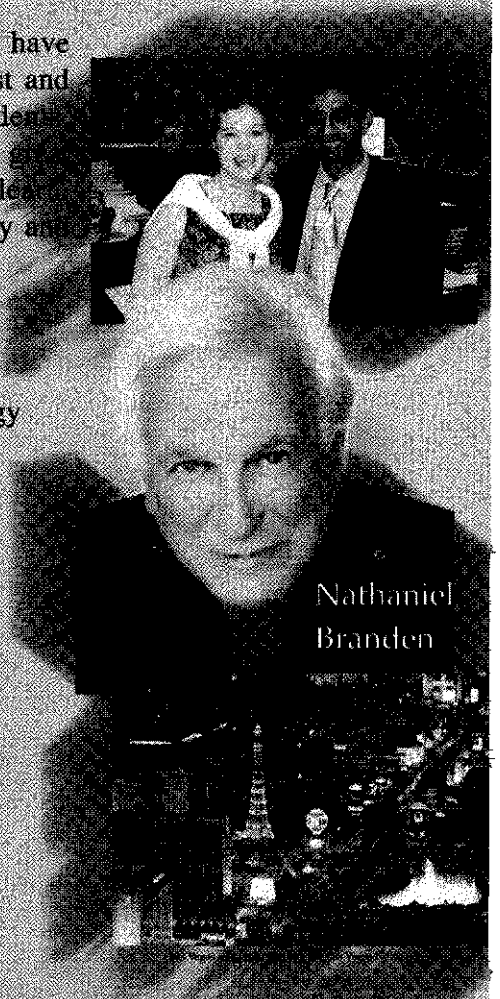
FreedomFest will be the intellectual feast you have been waiting for. You will join the world's best and brightest libertarian/conservative authors, students, business people, and think-tanks. Great ideas, great books, and great thinkers will enable you to learn, create, and network, thus advancing your liberty and free-market principles.

Some highlights you will enjoy:

- Breakout sessions in philosophy, economics, history, policy, law, art, science, and technology
- A debate room with interactive discussions
- Financial Freedom workshops with top experts in the finance field
- Liberty-minded organizations and exhibitors
- The Laissez Faire Book sale
- The Liberty Editors conference
- Two dazzling evening liberty banquets
- And Much, Much More!



Charles Murray



Nathaniel Branden

YOUNG AMERICA'S FOUNDATION

For more information or to register today, call or visit...

1.800.USA.1776 www.freedomfest.com

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Transcendental Goods

Charles Murray discusses art, accomplishment, faith, and doubt.

Ronald Bailey and Nick Gillespie

CHARLES MURRAY IS the W.H. Brady Scholar in Culture and Freedom at the American Enterprise Institute in Washington, D.C. His 1984 book *Losing Ground: American Social Policy, 1950–1980* was a devastating dissection of welfare programs and is widely credited with helping inspire the welfare reforms of the 1990s. In 1994 he co-authored the immensely controversial *The Bell Curve: Intelligence and Class Structure in American Life*. (**reason**'s critique of the book, authored by future Nobel laureate James J. Heckman, is online at reason.com/9503/dept.bk.HECKMAN.text.shtml.) And in 1997 he wrote an eloquent defense of human liberty, *What It Means to Be a Libertarian: A Personal Interpretation*.

Last fall Murray published *Human Accomplishment: The Pursuit of Excellence in the Arts and Sciences, 800 B.C.–1950* (HarperCollins). As one reviewer summarized it, "Murray sets out to describe the main human achievements from 800 BC to 1950 in music, literature and the visual arts, as well as medicine and the physical sciences. He also tries to identify the institutions, beliefs and practices—the culture—that facilitate outstanding achievements." In December **reason** Science Correspondent Ronald Bailey and Editor-in-Chief Nick Gillespie met with Murray to discuss *Human Accomplishment*.

reason: Why did you write this book?

Charles Murray: I wrote a book that I wanted to read. I am fascinated by greatness. I am fascinated by people who operate at the edges of human capacity, and I am also fascinated by excellence in different cultures.

reason: You argue that the "transcendental goods" are vital to motivating human accomplishment. What are they?

Murray: Truth, beauty, and the good, in the classic sense. The proposition is that artistic achievement and scientific achievement used ideals of the transcendental goods as source material. In some cases, as inspiration. In other cases, as templates against which you measure yourself.

reason: You say that we're in an era of decline—that the rate of human accomplishment has slowed in both the arts and the sciences—because we've turned our backs on the transcendental goods.

Murray: With the Enlightenment, we started a whole series of major acquisitions of new knowledge about how the world works. These were important and real and had great amounts of truth to them. They also played hell with the old verities. I'm thinking of the rule of reason as against traditional religion. I'm thinking Darwinism. I'm thinking of Freud. And Einstein.

In all sorts of ways, you had body blows to the ways of looking at the world that gave concepts such as truth, beauty, and the good their meaning. Take the good as the obvious example. If we are bundles of chemicals and religion is irrelevant and we have no souls, etc., etc., etc.—I can go through the whole litany—the good is sort of stripped of texture and richness.

reason: But the Enlightenment view is essentially correct, right? We *are* chemicals....

Murray: Here's the central dilemma. If the new wisdom is correct, then all of the anomie and the alienation and the nihilism and the rest of it make a lot of sense. As I note in the book, if that's all true, then one novelist suggests that all we can do is maintain a considered boredom in the face of the abyss. There have been a wide variety of efforts in the 20th century to come up with a rationale for positive action, but I actually think that the only way to maintain one's energy and sense of purpose is by being deliberately forgetful. That's why Camus was so miserable. He couldn't be forgetful enough.

I'm an agnostic, but I should add that I think the most foolish of all religious beliefs is confident atheism.

reason: So you're laying down a 21st-century variation of Pascal's wager? You don't really believe the transcendental goods are ordained by God, but we have to act as if they're true if we want to live purposeful lives?

Murray: You're right. I'm not a believer, but I am also not nearly as confident as intellectuals were 50 or 60 years ago that I do know the truth. I am much less willing to say, boy, was Johann Sebastian Bach deluded [because he believed in God].

reason: What do you think of the conservative argument that there really can't be morality without religious belief?

Murray: I am sympathetic to the idea that a society needs something other than laws to make it work.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

I'm very Burkean in that regard. I think that there are a variety of ways in which that can be supplied. I think that the rigidly secular approach is pretty thin gruel in this regard. Let's say you are aggressively secular and I pose the question, Why should I refrain from using you for my ends, using force if necessary? What is the ultimate reason why this is wrong?

At the end of the book, I say we're coming out of our adolescence as a society. I believe that we are going to be wiser 100 years from now as a species than we are now. I think we'll create a synthesis of old wisdoms and new.

Charles Murray (Courtesy John McDermott Photography)

reason: Why aren't you a conservative?

Murray: Too many conservatives are too happy to mess with me in ways I don't think they have any right to mess with me. I don't think it's any of their business, anybody's business, if I want to use drugs. I do use a drug. I use alcohol. I enjoy it thoroughly. I don't think that the government ought to be in the business of encouraging or discouraging marriage, for example. I think that healthy social institutions almost invariably come from leaving them alone rather than messing with them.

reason: What motivates you? You don't believe in God, yet you're writing all these books.

Murray: For whatever reason, I am hopeful, and so here is what I do. I am genuinely an agnostic. I genuinely would like not to be an agnostic, and so I go to Quaker meetings, and sometimes I sit in silence and just think, as we're supposed to think, although I find my [thoughts] wandering at that point. But I take a Bible along with me, and I read it because I don't read the Bible ordinarily. That sort of encapsulates what motivates me.

I take all of these issues very seriously. If I'm a betting man, what do I think the odds are that the cosmos has a meaning and I have a place in it? Probably 80/20 against. But by God, I glom onto that 20 percent.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Text Lit

Charles Paul Freund

THIS COMMON CELL phone may strike you as unremarkable, a familiar telecom device that, in this photo, is displaying the text message, "Yeah, yeah. Sure, sure. Whatever." But look again, because this device is morphing into something different: a linguistic and literary influence.

This winter, a French writer named Phil Marso published a short novel aimed at young readers and written entirely in France's own intricately developed cellphonic argot. It's an anti-smoking story titled *Pa Sage a Taba* (*Smoking Isn't Smart*). Agence France Presse has quoted a passage from Marso's text: "6 j t'aspRge d'O 2 kologne histoar 2 partaG le odeurs ke tu me fe subir?" ("What if I spray you with cologne so you can share the smells you make me suffer?")

It's notable that the first work of cellphonic fiction has appeared in a culture as notoriously protective of language as France, with its official usage cops. Yet Scotland was struggling a year ago with student-written essays in text-message English (see "Text Talk," June 2003). This appears to be a spreading phenomenon.

Many experts have assumed that digital media would transform reading and have predicted the eventual triumph of the e-book. YYSSW. We're still waiting. In fact, it may be self-expression that's being reshaped, one message at a time.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

End the FDA's Monopoly

INTERESTED IN MORE COMMENTARY ON PUBLIC POLICY?

SUBSCRIBE TO
The Hoover Digest: Research and Opinion on Public Policy.

Visit us online at www.hoover.org or call 800.935.2882 to receive a free copy of the award-winning Hoover Digest.

Paid for by the Hoover Institution, Stanford University

The Food and Drug Administration's (FDA's) recent ban on dietary supplements containing ephedra shows just how dysfunctional government regulation of drugs and dietary supplements is. Ephedra, according to the FDA, is a naturally occurring substance derived from a Chinese herb. Ephedrine, the main active ingredient of ephedra, has been used for centuries to treat respiratory symptoms and is also used to aid weight loss, enhance sports performance, and increase energy.

Why the ban? The FDA claims that dietary supplements containing ephedra pose "an unreasonable risk" for the consumer. The FDA states in its press release that it reviewed "a seminal report by the RAND Corporation." But in the fine print, you read that, of 16,000 adverse events RAND studied, there were two deaths, four heart attacks, nine strokes, one seizure, and five psychiatric cases. RAND said these events "*may* indicate a safety problem but *do not prove* that ephedra caused the adverse event" (emphasis added). Even Naderite Sidney Wolfe, a self-proclaimed consumer advocate, claims only 155 ephedra-related deaths over a decade.

Interestingly, **many users of such dietary supplements rushed to stock up on their supplies before the ban begins**. They judged, apparently, that the benefits were worth the risks. To the FDA, though, their judgment does not count. And therein lies the problem.

The same problem arises with the FDA's requirement that drug companies test for safety and efficacy before being allowed to sell a drug. This FDA monopoly power on new drugs slows new drug development by years. In December 1988, for example, the FDA approved Misoprostol, a drug that prevents gastric ulcers caused by aspirin. In some other countries, Misoprostol was available as early as 1985. Using the FDA's own estimates, Sam Kazman, an FDA expert at the Competitive Enterprise Institute, calculated that the FDA-caused delay cost more than 20,000 lives—and that's just for one delayed drug.

The tragedy is that these regulations are unnecessary. The FDA may have expertise on drug safety and efficacy, but on the main issue that matters—our trade-off among various risks, costs, and benefits—the FDA is a rank amateur. No one would advocate that the government plan the same vacation for everyone. Why, then, should the government be able to decide what drugs we ingest?

There is a simple solution: **Pare back the FDA's powers to that of an information agency.** Require that any drug marketed without FDA approval tout that fact in big letters. And let us make our own trade-offs. Then those who want to avoid all drugs not certified by the FDA can do so; the rest of us can rely on the American Hospital Formulary Service or other private certifiers and thus have wider choices. Those who stuck with FDA certification would be no worse off. Those who tried non-FDA-approved drugs would be, by their standards, better off.

—David R. Henderson

David R. Henderson is a research fellow at the Hoover Institution.

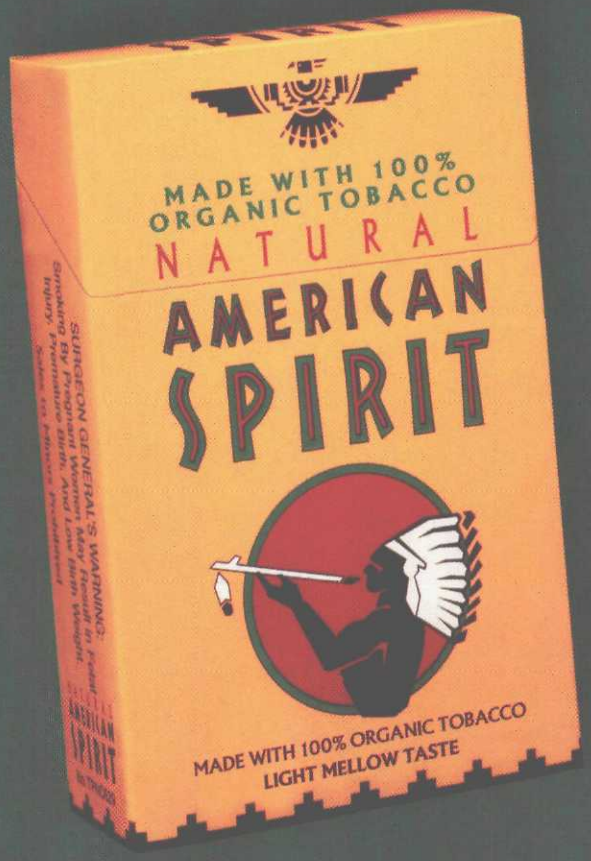
HOOVER INSTITUTION

. . . ideas defining a free society

STANFORD UNIVERSITY, Stanford California 94305-6010 Toll-free: 877.466.8374 Fax: 650.723.1687 info@hoover.stanford.edu www.hoover.org

LICENSED TO NEXIS
ELECTRONIC REPRODUCTION PROHIBITED

the *only* cigarettes made with 100% certified organic tobacco



100% additive-free natural tobacco certified under USDA standards

100% U.S. Grown Tobacco

For a sample carton offer call 1-800-872-6460 ext 31006.

SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.

No additives in our tobacco does **NOT** mean a safer cigarette.

SMOKING "LIGHT" FILTERED CIGARETTES DOES NOT ELIMINATE THE HEALTH RISKS OF SMOKING. Actual levels of tar and nicotine experienced by the smoker may vary widely depending on how you smoke. For more information, see www.nascigs.com

Natural American Spirit® is a registered trademark of Santa Fe Natural Tobacco Company. Offer restricted to smokers 21 years of age or older. Limit one sample carton per person per year (12 months). Shipping & Handling charges may apply.

© SFNTC 2

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED